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CHARTERED ACCOUNTANTS

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High Court Rulings

Interest on refund of excess amount of equalization levy paid by the appellant calculated from the end of financial year in which excess tax was paid up to date of payment of refund

Facts

The appellant has approached this Court alleging that there is failure on the part of Respondent to release the undisputed refund due and determined by respondent themselves in the intimation/order issued u/s 168(1) for FY 2017-18 despite reminders sent and for a direction to respondent to refund an admitted amount of INR 4.24 crores plus interest thereon. After the petition was filed, appellant received an amount of INR 4.24 crores towards refund on 21st August 2023 but without interest. The ld. DR appearing for Respondent states that the question of paying any interest does not arise because the Act does not provide for payment of any interest in cases of this nature. Appellant has been availing specified services as defined in clause (i) of Section 164 of the Finance Act, 2016 which came into force with effect from 1st April 2016. Section 164 of the Finance Act, 2016 provides in clause (i), unless the context otherwise requires - specified service means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government on this behalf. The appellant filed its statement of specified income originally on 26th June 2018 disclosing total consideration for specified services at INR 3.99 crores and equalisation levy thereon at INR 23.97 crores. After declaring total levy paid of INR 23.97 crores, refund of INR 60 was claimed which was later revised to INR 4.24 crores.

Rulings

It is not in doubt that the payment of tax made by resident/depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. HC have held that the interest requires to be paid on such refunds. The catechize is from what date interest is payable, since the present case does not fall either Section 244A(a) or (b). In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st April of the AY. Simultaneously, since the said payment is not made pursuant to a notice issued u/s 156, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to as in any other case, the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only the refund of tax deposited u/s 195(2), but has to be refunded with interest from the date of payment of such tax. HC further stated that it is not in doubt that appellant was entitled to refund of INR 4.24 crores because the amount has been paid after the petition was filed. Since the excess amount has been paid over by appellant on various dates during the FY, in HC's view, the refund ought to have been processed and paid latest by 31st July 2018. The interest, therefore, of course, will become payable from 1st April 2018 applying the principles prescribed u/s 244A. The amount, as noted earlier, has been paid only on 21st August 2023. Consequently, HC is of the view that appellant is entitled to interest on this amount of INR 4.24 crores from 1st April 2018 up to 21st August 2023 at the rate of 6% p.a. which is the rate prescribed u/s 244A.

Source: High Court, Bombay in the case of Group M Media India (P.) Ltd. vs DCIT, (IT) Circle-1(1)(2) vide [2023] 157 taxmann.com 487 (Bombay) on December 18, 2023

Objections filed objections u/s 144C(2) with DRP were not uploaded on AO's portal due to a technical issue and Faceless AO, unaware of objections, proceeded to pass assessment order; order and notice of demand were quashed and AO was directed to await DRP's directions before passing the order.

Facts

The appellant had filed its objections u/s 144C(2) with the Dispute Resolution Panel and a copy thereof was filed with the Jurisdictional Assessing Officer. Appellant, could not upload the objections in the portal due to a technical impediment in the portal. The Faceless Assessing Officer unaware of the fact that the appellant has filed its objections, proceeded to pass the assessment order without waiting for the directions of DRP u/s 144C(5).

Rulings

HC without going into merits of the matter and in view of the opinions expressed in ***Sulzer Pumps India Private Limited v. Deputy Commissioner of Income Tax, Circle-15(3)(2) and Others*** (Writ Petition (L) No. 15811 of 2021 dated 27th October 2021) and the view expressed by the ***Hon'ble Delhi High Court in Pepsico India Holdings Private Limited v. Assessment Unit ITDNFAC and Others*** (Writ Petition (C) No. 15322 of 2023 dated 1st December 2023), quashed and set aside the assessment order dated 13th November 2023 with the directions to the Assessing Officer to pass an assessment order once DRP passes its directions. Consequently, the notice of demand in Form No. 7 was quashed deciding appeal in favour of the appellant.

Source: High Court, Bombay in the case of Renaissance Global Ltd. vs National Faceless Assessment Centre vide [2023] 157 taxmann.com 621 (Bombay) on December 19, 2023

Where appellant was an independent, non-executive, and nominee director of a company, since it was not case of revenue that notice as contemplated by section 2(35) had been served upon appellant, prosecution proceedings initiated against appellant u/s 276B and 278B were to be quashed and set aside

Facts

The appellant seeks to challenge the orders whereby the ld. Additional Chief Metropolitan Magistrate issued the process and the fresh summons against him. He also prays to this Court to quash the Criminal Case filed by respondent against him for the offence punishable u/s 276B r.w.s. 278B. The ld. Senior Counsel appearing on behalf of the appellant, submitted that the appellant served as an independent, non-executive, and nominee director from 27-06-07 to 12-11-11. For the FY 2008-09, the company failed to deposit the TDS amount of INR 2.98 crores to the credit of the Central Government within the prescribed period; however, this amount was subsequently paid by the company in September 2010. He further submitted that the appellant became aware of the Criminal Case and the orders passed thereunder only on 05-09-22, when he received a copy of the summon dt. 03-08-22. He submitted that the learned Magistrate failed to appreciate that the complaint does not contain any specific averments or unambiguous allegation qua the appellant's role in the commission of the alleged offence. His main contention is that the appellant is not the principal officer u/s 2(35), and he was never served with any notice treating him as a principal officer as required u/s 2(35)(b) to initiate prosecution u/s 276B r.w.s. 278B.

The ld. DR on behalf of Respondent submitted that the before initiating the prosecution u/s 276B & 278B, Respondent had sent a notice u/s 2(35) to the appellant's company on 16-12-13 to nominate the principal officer. After the company nominated Jagadeesh Shetty as a principal officer, the department rejected the nomination as he was not a director at the time of the offence. The Department then issued another notice, granting the appellant's company another opportunity to nominate the principal officer which stated that if the Department did not receive a reply, it would treat all thirteen directors of the company as principal officers and initiate appropriate action without further intimation. He also submitted that the Department followed all necessary procedures, and accordingly, sanction was granted by the CIT (TDS). The appellant, a non-executive independent director of the company, regularly attended the meetings of the Board at the time of the commission of the offence. Therefore, he was well aware of all the legal and administrative matters of the company and cannot take the benefit of his designation as an independent director to absolve him from the prosecution u/s 278B.

Rulings

HC stated that the record does not indicate that the Department took any steps to ensure the delivery of the notice before initiating prosecution. Since the Department did not comply with the mandatory condition as enumerated in Section 2(35)(b), this Court finds it difficult to accept the contention of Respondent that it had followed all necessary procedures before initiating prosecution against the appellant. Additionally, a bare perusal of the order shows that before issuing the process, the ld. Magistrate did not take into consideration the relevant provisions of the I.T. Act and determine whether the mandatory notice u/s 2(35)(b) was delivered to the accused or not. Needless to state that an order of issuance of process is not an empty formality and requires the Magistrate to apply his mind before issuing the process. Further, the court also held that this Court has not discussed and dealt with the other grounds of the petition mainly because this Court is satisfied that the statutory requirement of service of notice as contemplated by Section 2(35)(b) is not complied with. This non-compliance goes to the root of the matter and dents the prosecution against the appellant. For all the above reasons, the order passed was quashed and set aside qua the appellant only.

Source: High Court, Bombay in the case of Anish Modi vs Union of India vide [2023] 157 taxmann.com 597 (Bombay)on December 20, 2023

Application to condone delay in filing return of income was accepted by Revenue with direction to pass order to condone delay in filing return and to issue refund with interest u/s 244A from date of deposit of amount of TDS till date of payment of refund

Facts

The appellant has challenged the order passed by the Respondent rejecting the applications to condone delay in filing the return of income and claim of refund u/s 119(2)(b) for AY 2013-14. The agricultural land of the appellant was acquired by the State of Gujarat under "Survo Scheme". The Land Acquisition Officer awarded compensation at the rate of INR 7.50 per sq. mtr. for irrigated land and INR 5 per sq. mtr. for non-irrigated land. Feeling aggrieved the appellant and other claimants filed Land Reference Cases before the Additional Senior Civil Judge, Gondal for additional compensation. The Reference Court awarded the additional compensation at the rate of INR 342 per sq. mtr. for irrigated land and INR 275 per sq. mtr. for non-irrigated land. The State of Gujarat challenged the Judgment and the award passed by the Reference Court before this court. This Court directed the Irrigation department to deposit 50% of the awarded amount with the Court and out of 50% amount, half of the amount was permitted to be withdrawn by the appellant and the remaining half was ordered to be deposited in a Fixed Deposit to be maintained with a nationalized bank for five years. While depositing 50% of the awarded amount with the Court, the Irrigation Department deducted TDS on the interest portion of the amount deposited and withdrawn. However, the Executive Engineer of the Irrigation Department did not inform the appellants about the deduction of TDS and did not issue Form 16A. Placing reliance on section 194LA, no TDS was liable to be deducted from the interest on compensation paid on acquisition of agriculture land. The appellant, therefore, preferred application to condone the delay in filing the return of the income with a claim of refund. This Court remanded all the appeals to the Reference Court for deciding the same afresh. The respondent authorities by impugned order rejected the said application for condonation of delay which is being further challenged.

Rulings

HC placed reliance on the provisions of Section 244A which existed during the relevant AY 2013-14, which states that when the proceedings resulting in the refund are not delayed for reasons attributable to the appellant whether wholly or in part, the period of the delay so attributable only can be excluded from the period for which interest is payable u/s 244A(1)/(1A)/(1B). In the facts of the case, the words "or the deductor, as the case may be," which is inserted with effect from 01-04-17 would not be applicable as the appellants have been permitted to file the refund claim for the AY 2013-14 after condonation of delay and such delay in claiming the refund cannot be said to be attributable to the appellants as the appellants were not made aware about the deduction of tax at source by the deductor in absence of issuance of Form 16A which was mandatorily required as per Rule 31(3) of the Rules.

The petition was succeeded and was accordingly allowed. The respondents were directed to pass the order to condone the delay in filing the return and to issue the refund with interest u/s 244A from the date of deposit of the amount of TDS till date of payment of refund as per provisions of section 244A.

Source: High Court, Gujarat in the case of Ramjibhai Lavabhai Undhad vs Chief Commissioner of Income-tax vide [2023] 157 taxmann.com 706 (Gujarat) on December 21, 2023

AO denied deduction u/s 80IB(10) on ground of late filing of return; CIT(A) and Tribunal had concurrently held that appellant entitled to claim specifically computed deductions should not be burdened with taxes which it was otherwise not liable to pay under law

Facts

The main function of the appellant is to develop housing facilities in the State. It filed return of income for AY 2006-07 declaring an income of INR 2.34 crores which was later on revised declaring income of INR 11.87 lacs after claiming deduction of INR 2.25 crores u/s 80IB(10). The AO in the assessment order u/s 143(3) declined the deduction claimed by the appellant in its revised return for the reason that the appellant had not filed the original return within the permissible period u/s 139(1). The AO also held that in view of provisions of Section 80AC, the appellant was not entitled to claim deduction u/s 80IB(10). Nevertheless, the merits of appellant's deduction claim were also examined by the AO project wise and he found that none of the concerned 21 projects was eligible for deduction. However, on the basis of revised return, the AO further added administrative charges and transfer charges as revenue receipts of the appellant to the total income. The CIT held that the appellant could not have filed revised return since its original return was filed beyond the period prescribed u/s 139(1). The CIT(A) further stated that as per Section 80AC, deduction u/s 80IB cannot be allowed unless the return is filed by the due date specified in Section 139(1). After concurring with AO regarding non-entitlement of the appellant to the deduction claimed by it, the CIT also examined the merits of the appellant's deduction claim project wise. It held that out of claimed deduction, only INR 2.11 lacs was taxable and rest was liable to be deducted u/s 80IB(10). The finding of AO that the transfer charges were to be added to the appellant's taxable income was upheld. The AO's order of adding administrative charges in the income of appellant was, however, held wrong and the amount was ordered to be deleted.

The appellant approached the Tribunal and claimed that filing of its return was delayed due to delay by the local Audit Department; therefore, the deduction admissible to it in law cannot be denied owing to this bonafide reason and consequent delay in filing the revised return. Section 80IB in a non-est return be allowed or not, learned ITAT held that non-est return does not exist in the eyes of law, hence no beneficial use or adverse conclusion can be drawn from such return. It is a return on which none can act upon. It is simply not there. No views, interpretation, derivation can be taken or given on such legally non-existing document.

However, learned ITAT also held that the CIT ought to have considered the claim of appellant in exercise of its appellate jurisdiction u/s 250. If the appellant is otherwise entitled to deduction, but due to its ignorance or for some other reason could not claim the same in the return of income, but has raised its claim before the Appellate Authority, then the Appellate Authority should have looked into the same. The appellant cannot be burdened with taxes which it otherwise is not liable to pay under the law. A duty is cast upon the Income Tax Authorities to charge legitimate taxes from the tax payers. They are not there to punish the tax payers for their bonafide mistakes. Accordingly, for the AY, the deduction computed by the CIT on the merits of appellant's claim was confirmed and the appeal was accordingly allowed. Feeling aggrieved against the order passed by the ITAT, the revenue has preferred instant appeal.

Rulings

In the instant case, the appellant is a statutory organization created by the State for providing & develop housing infrastructure. It took up a defence of late audit for belated filing of its return of income. The veracity of ground so put forth for late filing of return has not been disputed by the appellant. The appellant deals with public money, the State exchequer. The CIT and the ITAR have concurrently held on facts after undertaking a lengthy & pain staking exercise that the appellant was actually entitled to deductions u/s 80IB(10). The specific amount of deduction admissible to it has also been computed. The ground put forth by the appellant for not filing the return of income within the time provided u/s 139(1) having been accepted on facts by the appellant, HC in the given facts is inclined to hold, that the appellant had a reasonable & bonafide cause for not filing the return of income within the time permitted u/s 139(1). In view of above, HC is in agreement with the view of the learned ITAT that once in the given facts, the appellant has been held entitled to claim the specifically computed deductions, then it should not be burdened with taxes which it is otherwise not liable to pay under law.

Source: High Court, Himachal Pradesh in the case of PCIT vs H.P. Housing & Urban Development Authority (HIMUDA) vide [2023] 157 taxmann.com 598 (Himachal Pradesh) on December 22, 2023

Reference made to Valuation Officer to find out fair market value of property was not justified where sale consideration received on transfer of capital asset was equal to circle rate

Facts

This appeal is filed by the appellant against the final assessment order of the Assessing Officer passed u/s 143(3) r.w.s. 144C(13) in computing the capital gains by considering the valuation of the DVO as the fair market value of the property instead of the value shown by the appellant which is also the circle rate. The appellant in its appeal raised the ground that the action of the AO in making an addition of INR 49.96 lacs as long-term capital gain being the difference of Fair Market Value of the property estimated by the Valuation Officer at INR 1.20 crores and the actual sale consideration and circle rate of INR 70.30 lacs shown by the appellant, is unjust, illegal, arbitrary and against the facts and circumstances of the case. The ld. Counsel for the appellant, submits that reference to Valuation Officer u/s 50C is bad in law for the reason that the sale consideration of the property is not less than the circle rate placing reliance on ***PCIT v. Shanubhai M Patel reported in 73 taxmann.com 151 (SC).***

Rulings

In the case on hand the valuation as per Stamp Value Authorities is same or equal to the sale consideration received by the appellant. Provision of Section 50C(1) says if the sale consideration is less than the value adopted by the Stamp Valuation Authorities the value so adopted by the Stamp Valuation Authorities shall be deemed to be the full value consideration. ITAT held that here in the case in hand, the appellant has reported the sale consideration which is equal to the stamp valuation adopted by the Stamp Valuation Authorities in other words the circle rate. The sale consideration reported by the appellant is equal to the circle rate and not less than the circle rate. Therefore, following the decision of the Hon'ble Gujarat High Court in PCIT v. Shanubhai M Patel 73 taxmann.com 138,

ITAT hold that when the sale consideration is more than or equal to the circle rate the reference made to Valuation Officer to find out fair market value of the property is not justified. Thus, the Tribunal held that the reference to Valuation Officer in the case of the appellant is bad in law. Since reference made to Valuation Officer was held to be bad in law, the addition made to long term capital gains will not survive. Accordingly, the same is directed to be deleted and the appeal of the appellant was accordingly allowed.

Source: ITAT, Delhi Bench 'D' in the case of Akash Garg vs DCIT, Circle (IT) 1(3)(1) vide [2023] 157 taxmann.com 267 (Delhi - Trib.) on December 04, 2023

Where AO had reduced interest only to extent it was determined at point of issuance of earlier refunds, thus, leading to larger adjustment of refund towards tax component as against interest component, AO was to be directed to compute correct amount of interest allowable to appellant by first adjusting amount of refund already granted

Facts

The appellant is the principal investment holding company and promoter of Tata companies. The return for AY 1993-94 was filed declaring Nil income which was subject to assessment. The ld. DCIT 2(3)(1), Mumbai passed an order giving effect (OGE) dated 08-03-16 grating the refund of INR 30.46 crores which was received on 18-08-22. The grievance of the appellant with regard to the short credit of interest is threefold as listed below:

- The AO has incorrectly adjusted the earlier refunds- Interest short credited INR 9.93 crores
- The AO has not calculated the interest for the interim period from when the OGE was passed and the actual receipt of refund- Interest short credited INR 11.27 crores
- The AO has not calculated the interest u/s 244A(1A)- Interest short credited- INR 7.09 crores

The ld. AR submitted that where the refunds have been issued in parts, the AO while adjusting the refund issued earlier has erred in apportioning amount of earlier refund towards the principal and interest component determined then i.e. without considering the present relief. The AO has reduced interest only to the extent it was determined at the point of issuance of the earlier refunds, thus, leading to larger adjustment of the refund towards the tax component as against the interest component.

The ld. AR submitted that in accordance with the principle of equity. In terms of the Explanation to section 140A(1), the ld. AO should have first apportioned the part refund towards the interest now calculated and then the balance, if any, towards the principal component. The AO has, however, reduced the old interest. Accordingly, a larger amount has been reduced from the principal component leading to short refund. The ld. AR further submitted that in terms of the Explanation to section 140A(1), where the amount paid by an appellant towards self-assessment tax falls short of the aggregate amount of tax and interest, then, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards tax payable, meaning thereby, the exchequer should never be deprived of its legitimate dues payable by the appellant in time. However, there is no such specific provision u/s. 244A with respect to adjustment of refund already issued for computing amount of interest payable to the appellant on the amount of refund due. Thus, the law is silent on this issue. Under these circumstances, fairness and justice demands that same principle should be applied while granting the refund as has been applied while collection of tax.

Rulings

ITAT after hearing to both the parties and perusing the material on record. The first grievance of the appellant with regard to calculation of interest u/s 244A is the way in which the AO has adjusted the refunds issued. In this regard we notice that the coordinate bench has been consistently holding the AO is required first adjust the interest component and then the taxes for the purpose of calculating interest u/s 244A. The ratio laid down is that the amount of interest u/s 244A is to be calculated by first adjusting the amount of refund already granted towards the interest component and balance left if any shall be adjusted towards the tax component. Therefore, we hold that the manner in which the AO has adjusted the refund is not correct and that the appellant would be entitled for interest on the unpaid refunds in accordance with the principle laid out in the aforesaid decision of Tribunal. The ld. AR during the course of hearing submitted a detailed working of the manner in which the AO has calculated the interest and also the correct way in which the same is to be calculated. Accordingly, the AO is directed to compute interest u/s 244A as per the claim of the appellant after giving a proper opportunity of being heard. On the issue of grant of refund till the date of issue of refund, the ld. AR submitted that the issue is squarely covered in favour of the appellant vide the decisions of Hon'ble Bombay High Court in case of CIT vs. Pfizer Limited [1991] 191 ITR 626 (Bom) and also of City bank NA Mumbai Vs. CIT in ITA No. 6 of 2001 as well as the decision of CIT vs. K.E.C International in ITA No. 1038 of 2000. Respectfully following the aforesaid precedents, in our considered view, the appellant was justified in seeking interest u/s 244A up to the date of receipt of the refund order. Accordingly, the AO is directed to re-calculate the interest up to the date of actual receipt of refund by the appellant.

The next issue contended pertaining to the interest calculation is that additional interest u/s 244A(1A) to be calculated on the total amount of refund including

Rulings

Interest. In this regard the ld. AR drew our attention to the provisions of Section 244A(1A), in terms of which, when there is a delay in granting refund due to the appellant as a result of delay in passing an order giving effect to the appellate order or revisional order, the appellant is entitled to the additional interest on such amount of refund at 3% p.a. for the period as mentioned therein. The ld. AR submitted that the ITAT order, was passed on 04-02-15 & 01-01-16 and the present OGE has been passed on 08-03-16 and refund was received on 18-08-22. The provision of Section 244A(1A) came into effect from 01-06-16 and hence from 01-06-16 to 31-08-22 there is a delay of 75 months for which the appellant is entitled for additional 3% interest u/s 244A(1A). The ld. AR in this regard relied on the decision of the coordinate bench in case of ACIT vs Bharat Petroleum Corporation Ltd. (Mumbai ITAT "B" Bench) (30.06.2021) (ITA No. 5231 to 5233 of 2019).

The provisions of Section 244A(1A) are inserted by the Finance Act, 2016 as a remedial measure to compensate the appellant in cases where there are delays in granting refunds due on account of delay in passing order giving effect to appellate or revisional orders. Applying the ratio laid down by the coordinate bench in the case of Bharat Petroleum Corporation Ltd, ITAT is of the considered view that the provisions of section 244A(1A) would be applicable in appellant's case from 01-06-16 till the date of actual receipt of refund and accordingly we remit the issue back to the AO to examine the issue afresh and calculate the additional interest u/s 244A(1A) in accordance with law. In result the appeal of the appellant is partly allowed.

Source: ITAT, Mumbai Bench 'E' in the case of Tata Sons (P.) Ltd. vs DCIT, 2(3)(1) vide [2023] 157 taxmann.com 329 (Mumbai - Trib.) on December 06, 2023

Approval granted u/s 153D by Add. Commissioner to draft assessment order was without issuance of DIN; final assessment order passed u/s 153A on basis of such invalid and non-est approval without sanction of law was therefore quashed

Facts

The appellant has challenged the under mentioned additions:
-Cash deposit in the bank account to the extent of INR 78.69 lacs confirmed by the CIT(A) in terms of the provisions of section 68 r.w.s. 115BBE.
-Disallowances in business promotion expenses INR 4.33 lacs and initiation of penalty proceedings u/s 270A(2).
The prayer for admission of additional grounds was admitted for adjudication in terms of Rule 11 of Income-tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in the additional grounds are legal in nature for which relevant facts are stated to be emanating from existing records.

At the outset of the proceedings before the Tribunal, the ld. Counsel for the appellant adverted to additional ground with reference to CBDT Circular 19/2019 dated 14-08-09 casting mandatory obligations on the revenue authorities to place DIN on all communication by way of orders, approval, and notice of demand u/s 156, etc. and submitted that in the light of plethora of judgments delivered on the controversy, the impugned assessment order passed and notice of demand issued u/s 156 in violation of CBDT circular are rendered non-est and invalid by operation of law.

The ld. Counsel also pointed out that the notice of demand u/s 156 also does not bear DIN and consequently, the assessment order without notice of demand is yet legal infirmity which blunts the validity of assessment order and such order rendered without any formal decree of recovery.

The learned DR on the other hand thus contended that the communication was issued with valid DIN and there is no departure to the mandate of CBDT Circular. The learned DR submitted that assessment order and the Notice of demand u/s 156 which may have been manually signed by the AO, were generated and issued with the DIN in real time on 20-12-21 and thus essentially submits that substantial compliance of CBDT circular is apparently discernible from facts on record and no adverse inference is thus called for such procedural lapse, if any.

Rulings

ITAT held that it is an admitted position that the approval granted u/s 153D by the Addl. CIT to the draft assessment order is without issuance of DIN. In the backdrop of nuanced judicial view, the approval u/s 153D which is the fulcrum for passing final assessment order dated 19-02-21 in question is thus apparently non-est in law in the absence of DIN allocated to such communication at all. The final assessment order so passed u/s 153A in question on the basis of such invalid and non-est approval u/s 153D is thus without sanction of law. ITAT therefore held that the assessment order passed u/s 153A is thus liable to be quashed at threshold. Similarly, notice of demand u/s 156 without DIN and on the basis of non-est assessment order is also to be reckoned as a nullity. Having held the assessment order passed is vitiated owning to non-conformity with the CBDT Circular No.19 of 2019, ITAT did not considered it necessary to go into other aspect of objections raised on behalf of the appellant in its main grounds of appeal and additional grounds. In the result, appeal of the appellant was allowed.

Source: ITAT, Delhi Bench 'B' in the case of Finesse International Design (P.) Ltd. vs DCIT, CC-14 vide [2023] 157 taxmann.com 271 (Delhi - Trib.) on December 13, 2023

Where appellant during demonetization deposited substantial amount of cash in banks and claimed that source for cash deposits was out of advance received from customers which were subsequently converted into sales of jewellery, said trade advance could not be examined in light of provisions of Section 68

Facts

The appellant M/s Sahana Jewellery Exports Pvt. Ltd. is engaged in the business of trading in gold and jewellery and has filed its return for AY 2017-18 admitting total income of INR 15.37 lacs. The case was selected for scrutiny in order to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO called for information from various banks by issuing notice u/s 133(6) and ascertained that the appellant has deposited cash into various accounts totaling to INR 48.82 crores during demonetization period. The AO called upon the appellant to furnish books of accounts, including cash book and also explain source for such cash deposits. In response, the appellant submitted that source for cash deposits is out of advance received from customers for gold scheme and the same has been recorded in the books of accounts of the appellant. The appellant further claimed that as on the date of demonetization, cash in hand as per cash book maintained by the appellant was at INR 48.83 crores. The appellant claimed that source for cash deposits is out of sales declared prior to the date of demonetization and argued that it has sufficient cash in hand to explain cash deposits during the demonetization period. The AO issued SCN and informed that summons issued to various persons were returned 'unnerved', and therefore, called upon the appellant to file necessary details, including name and address of the parties from whom advance has been collected against gold scheme and also file books of accounts and other details to justify cash deposits. In response, the appellant submitted that due to human error of 'CUT' & 'PASTE', the Auditor who was handling the case before the AO, has filed wrong details with regard to source for cash deposits and claimed that source for cash deposits is out of advances received from various persons. However, fact remains that the appellant has received advances from various persons for sale of gold jewellery and the same has been accounted as sales for relevant period.

The AO held that substantial number of summon issued were returned back by the postal authorities by citing 'no such person' or 'insufficient address'. Therefore, opined that appellant could not discharge the initial onus to establish three things necessary to obviate the mischief of sec 68 i.e. identity of the investors, about their creditworthiness and genuineness of the transactions. Since, the appellant has failed to prove the credits found in his bank account to the satisfaction of the AO, the total cash receipts amounting to INR 51.40 crores was treated as unexplained cash credit and brought to tax u/s 68 r.w.s.115BBE. Being aggrieved by the assessment order, the appellant preferred an appeal before the ld. CIT(A). During the course of appeal proceedings, the appellant has furnished all evidences, including books of accounts, purchase and sales bills, to establish genuineness of sales declared up to/before the date of demonetization and also explained that there is no abnormal variation in total sales and cash sales declared for the impugned year when compared to earlier FY. The ld. CIT (A) after considering relevant submissions of the appellant and also by the decision of the Hon'ble SC in Lalchand Bhagat Ambica Ram v. CIT opined that the appellant is able to

explain source for cash deposits during the demonetization period out of cash in hand available before the date of demonetization as per cash book maintained for the impugned year. The ld. CIT also stated that the AO failed to make out any of such irregular movement of stock in trade or deficit stock in trade when the appellant has declared sales for the relevant period. In fact, there is no iota of evidence in the order passed by the AO with regard to discrepancy in books of accounts and stock details maintained by the appellant. Therefore, the ld. CIT(A) opined that the AO has erred in making additions towards cash receipts u/s 68 r.w.s. 115BBE, and thus, directed the AO to delete addition made towards cash deposits. Being aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before ITAT.

Rulings

It is an admitted fact that the appellant was having sufficient cash balance as per cash book maintained for the relevant period. In fact, cash in hand as on the date of demonetization i.e. 08-11-16 was at INR 48.84 crores and said cash balance is backed by cash receipts recorded in the books of accounts before the date of demonetization. Further, cash receipts from various persons have been further substantiated with sales made to them before the date of demonetization. In fact, the appellant has filed various evidences, including sales bills to support its arguments. The AO never disputed sales declared by the appellant nor pointed out any discrepancy in purchase or stock in trade held in the business of the appellant before the date of demonetization. In fact, the appellant has filed comparative sales for the month of April, 2016 to November, 2016 and corresponding April 2015 to November, 2015 and we find that there is no abnormal deviation in sales declared for the month of November, 2016 when compared to earlier periods. It is not a case of the AO that the appellant has declared sales without purchases. In fact, a sale declared by the appellant is backed by corresponding purchases, and is supported by necessary purchase bills. The AO could not point out any discrepancy in stock register maintained by the appellant nor made out a case that the appellant has declared sales without there being any stock in hand. Therefore, in absence of any contrary findings to the effect that the sales declared by the appellant is not backed by any corresponding purchase or supported by stock in hand, in our considered view, simply sales cannot be rejected on the ground that sale for the particular month or period is higher when compared to corresponding previous period. Further, there cannot be any reason for uniform sales in all days or month or year. There may be various reasons for increase or decrease in sales which depends upon various factors, including festival sales, clearing sales, yearend sales, etc. Therefore, the explanation of the appellant that it has received cash from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be bona fide and reasonable.

ITAT is of the considered view that the AO is erred in making additions towards cash receipts received for sale of jewellery, which has been subsequently converted into sales, for the impugned assessment year as unexplained cash credits taxable u/s 68. The ld. CIT(A) after considering relevant facts has rightly deleted the additions made by the AO, and thus, we are inclined to uphold the findings of the ld. CIT(A) and dismiss the appeal filed by the Revenue.

Source: ITAT, Chennai, Bench "C" in the case of Income Tax Officer, Corporate Ward-2 vs Sahana Jewellery-Exports (P.) Ltd. vide [2023] 157 taxmann.com 680 (Chennai - Trib.) on December 20, 2023

Where claim of additional deduction of depreciation on goodwill was inadvertently missed and was made by way of filing revised return, disallowance of claim for deduction of depreciation by authorities below could not be sustained

Facts

The appellant is engaged in providing Information Technology Enabled Services to its AEs. During the FY 2016-17, appellant acquired entire shareholding of SNL Financials (India) Private Limited for a consideration of INR 172.43 crores from its existing shareholders. Since the Appellant had acquired shares at premium from existing shareholders of SNL India, excess purchase consideration over net assets of SNL for INR 104.16 crores were recorded as goodwill in the consolidated audited financials of appellant. Pursuant to such merger, the appellant recorded the excess purchase consideration over net assets of INR 104.16 crores as negative capital reserve in terms of Ind-AS accounting, which is nothing but goodwill, which again is an intangible asset from tax perspective. While filing the return for the AY 2018-19, the claim of the additional deduction of depreciation on goodwill amounting to INR 26.04 crores was inadvertently not preferred. Appellant made such a claim by way of filing revised computation of income. The ld. AO in the draft assessment order did not consider the additional claim made by the appellant without providing any reasons. Aggrieved, appellant preferred objections before the ld. DRP. The appellant contended before the ld. DRP that by mistake, while filing the return of income, did not claim the additional depreciation on goodwill. According to the appellant, whether or not in respect of depreciation in computing the total income, the provisions u/s 32(1) shall continue to apply. The appellant placed reliance on the decision of the Hon'ble Apex Court in Smifs Securities [2012] 348 ITR 302, wherein it was held that goodwill of a business or profession is a depreciable asset.

The ld. DRP rejected such a claim observing that, the object of the issue of notice u/s 143(2) is only to ensure that there is no understatement of income or no underpayment of the tax or there is no excess claim of loss or reduction, and, therefore, the ld. AO is not empowered to reduce the total income shown in the return of income; that the legislature while introducing Section 139(5) were aware of the fact that there may be certain wrong statements or omissions in the return of income and, therefore, the provisions for filing the revised return was incorporated and accordingly every appellant was allowed a time of one year from the end of the AY. According to the ld. DRP, when the law provides that any error or omission can be rectified only by filing the revised return within the prescribed time u/s 139(5), neither the appellant is entitled to raise such claim after the prescribed time before the AO nor the AO is empowered to entertain such claim.

Further according to Explanation 5 to Section 32(1), whether or not the appellant claimed the deduction in respect of depreciation in computing the total income, the provisions u/s 32(1) shall continue to apply. Circular No. 14 (XL-35) of 1955, dt. 11-04-1955, the officers of the department are under legal obligation not to take advantage of ignorance of any appellant as to his rights and they are supposed to take initiative in guiding a taxpayer about the reliefs due to him. Ld. AR further submitted that under Article 265 of the Constitution of India, taxes not to be imposed nor levied nor collected except by authority

of law. On this premise he submits that when the appellant is entitled to claim depreciation on goodwill, still such depreciation has to be allowed and denial of the same would amount to levying in collecting more tax than sanctioned by law.

Rulings

ITAT held that the explanation 5 to Section 32(1) clearly lays down that the provisions of such sub-section shall apply whether or not the appellant has claimed the deduction in respect of the depreciation in computing the total income. It, therefore, goes without saying that irrespective of the fact of appellant claiming or not, the depreciation shall be allowed while computing the total income of the appellant. Then it becomes the obligation on the part of the Revenue to allow depreciation on goodwill even if it is not claimed by the appellant. At the same time, the CBDT Circular No.14 (XL – 35) of 1955, dt. 11-04-1955, reinforces this obligation in unequivocal terms, stating that the department must not take advantage of ignorance of any appellant as to his rights and it is one of the duties of the department to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs, by taking initiative in guiding the taxpayer where the proceedings are before them indicate that some relief is due to the taxpayer. When we read Explanation 5 to Section 32(1) and the above circular issued by the CBDT in the context of Article 365 of the Constitution of India, we find it difficult to uphold the action of the authorities below in depriving the appellant of the claim for deduction of depreciation on goodwill. CIT is of the considered opinion that disallowance of the claim for deduction of depreciation on goodwill by the authorities below cannot be sustained and the same is liable to be deleted.

Source: ITAT, Hyderabad Bench 'A' in the case of S&P Capital IQ (India) (P.) Ltd. vs ACIT, Circle-3(1) vide [2024] 158 taxmann.com 12 (Hyderabad - Trib.) on December 26, 2023

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