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CHARTERED ACCOUNTANTS

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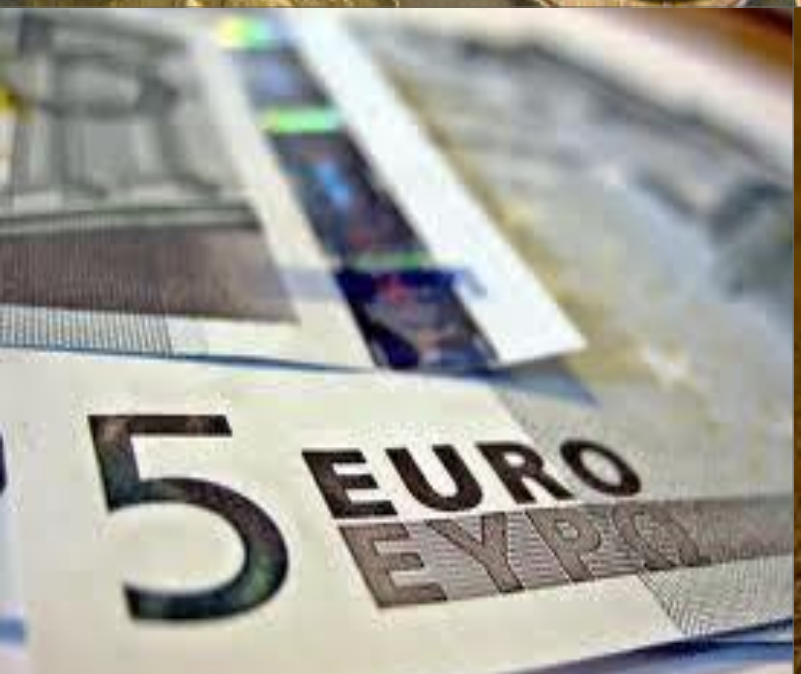
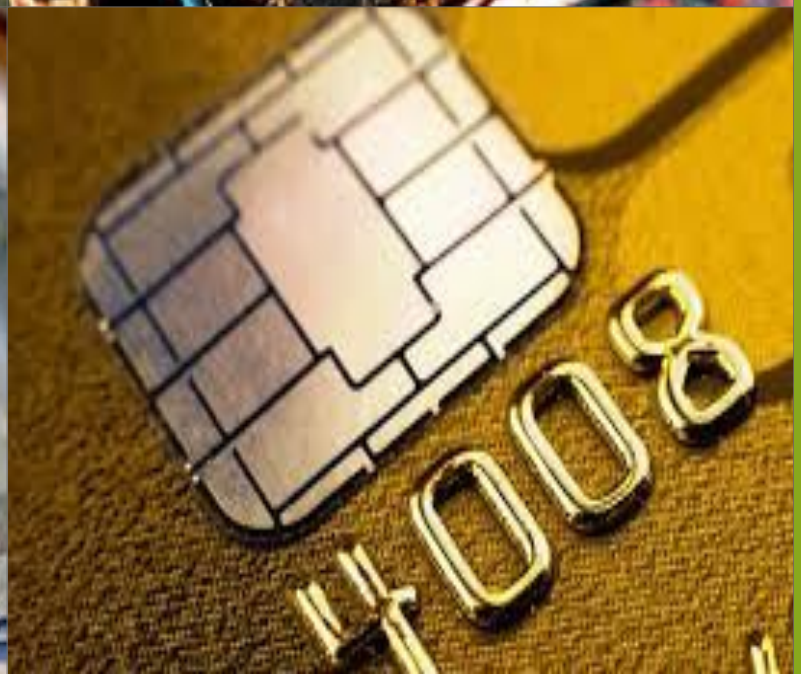
DOMESTIC TAX REVIEW

APRIL 2022





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DOMESTIC TAX

SUPREME COURT RULINGS

HC cannot dismiss appeal by simply observing that no substantial question of law is involved

Facts

From the office report, it appeared that the respondent assessee sent a letter to the Registry of this Court on 22-10-2021 to grant an adjournment of three months. The time was accordingly granted. Despite the same no vakalatnama was filed and none has appeared on behalf of the respondent. Hence, service of notice on the respondent is complete. By the impugned order the High Court has dismissed the said appeal simply by observing that none of the questions as proposed by the revenue could be termed as the substantial questions of law and all the questions proposed are on factual aspects of the matter. However, it is required to be noted that except re-producing the proposed questions of law, there is no further discussion on the factual matrix of the case. Aggrieved and dissatisfied with impugned order passed by HC of Gujarat who dismissed the appeal preferred present appeal before your good self.

Ruling

SC held that as the impugned order passed by the High Court is a non-speaking and non-reasoned order and even the submissions on behalf of the revenue are not recorded, the impugned order passed by the High Court dismissing the appeal is unsustainable and is hereby quashed and set aside. The matter was further remanded back to the HC to decide and dispose of the appeal afresh in accordance with law and on its own merits. If the HC is of the opinion that the proposed questions of law are not substantial questions of law and they are on factual aspects, it will be open for the HC to consider the same in accordance with law, however, the HC to pass a speaking and reasoned order after recording the submissions made on behalf of the respective parties. The case was therefore allowed to the aforesaid extent.

Source: SC in PCIT vs Bajaj Herbals (P) Ltd. dated April 07, 2022 vide [2022] 137 taxmann.com 110 (SC)

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Forex fluctuation on repayment of foreign currency loans taken to purchase capital equipment for leasing/ HP activity allowed u/s 37(1); Section 43A has no application here

Facts

The return of the assessee was filed with loss owing to exchange Fluctuation. The loan was obtained in foreign currency however, while repaying the loan, due to the difference of rate of foreign exchange, the appellant had to pay higher amount, resulting in loss to the appellant. The loan amount was utilized by the appellant for financing the existing Indian enterprises for procurement of capital equipment on hire purchase or lease basis. As against the loss declared by the appellant, the assessment was concluded by positive taxable income. Against that decision, the matter was carried in appeal by the appellant before the CIT-A and eventually, by way of appeal before ITAT. The appellant before ITAT not only claimed deduction in respect of loss but also set up a fresh claim in respect of revenue

expenses erroneously capitalized in the returns. The ITAT entertained this fresh claim set forth by the appellant and recorded in its judgment that the department's representative had no objection in that regard. ITAT proceeded to consider the question whether the loss suffered by the appellant owing to exchange fluctuation can be regarded as revenue expenditure or capital expenditure incurred by the appellant and answered the same in favor of the appellant by holding that it would be a case of expenditure on revenue account and an allowable deduction. The matter was carried before the High Court by the department who reversed the view taken by the ITAT, mainly observing that the ITAT had not recorded sufficient reasons in support of its conclusion and in any case, the conclusion was without any basis.

Ruling

SC in the case held that it was certainly not for creation of asset of the appellant as such or acquisition of asset from a country outside India for the purpose of its business. In such a scenario, the appellant would be justified in availing deduction of entire expenditure or loss suffered by it in connection with such a transaction in terms of Section 37 of the Act. For, the loan is wholly and exclusively used for the purpose of business of financing the existing Indian enterprises, who in turn, had to acquire plant, machinery, and equipment to be used by them. It is a different matter that they may do so because of the leasing and hire purchase agreement with the appellant. That would be, nevertheless, an activity concerning the business of the appellant. In that view of the matter, the ITAT was right in answering the claim of the appellant in the affirmative, relying on the dictum of this Court in India Cements Ltd. vs. CIT, Madras.

Source: SC in Wipro Finance Ltd. vs CIT dated April 12, 2022 vide CIVIL APPEAL NO. 6677 OF 2008

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Disputed Tax is relevant for determining tax effect below which Departmental appeal to HC is barred by CBDT Circular

Facts

The penalty amount in the present case was substantially reduced to Rs. 6 lakhs and even the subsequent demand notice was for an amount of Rs. 6 lakhs (approx.) only and therefore in view of the CBDT Circular dated 10-12-2015, the tax effect being lower than the permissible limit to prefer the appeal before the High Court and therefore the appeal before the High Court was not maintainable is concerned. The Revenue was of the opinion the penalty amounting to Rs. 29.02 lacs should be considered and not the penalty reduced by the CIT(A). Before the HC, both the Revenue, as well as the assessee, preferred the appeal and the entire penalty of Rs. 29.02 lacs were an issue.

HC held that what is required to be considered is what was under challenge before the Tribunal as well as the High Court. At the cost of repetition, it is observed that what was challenged by the Revenue was the penalty amounting to Rs. 29.02 lacs and not the subsequent reduction of penalty by the CIT(A). HC also held that that the subsequent reduction in penalty in view of the subsequent order cannot oust the jurisdiction Feeling aggrieved and dissatisfied with the impugned order dated passed by the HC, Rajasthan, by which the High Court has allowed the appeal preferred by the Revenue and has set aside the order passed by the ITAT deleting the penalty under Section 271(1)(c), the assessee has preferred the present appeal.

Ruling

SC held we are in complete agreement with the view taken by the High Court. Therefore, it cannot be said that the appeal before the High Court

at the instance of the Revenue challenging the order passed by the ITAT was not maintainable in view of CBDT circular. SC also held that there is no substance in the present appeal and the same is accordingly dismissed.

Source: SC in lt. Sh. Gyan Chand Jain vs CIT dated April 19, 2022 vide [2022] 137 taxmann.com 323 (SC)

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HIGH COURT RULINGS

Subsidy not directly relatable to asset acquired can be apportioned to and reduced from only from cost of those assets for which it was utilized

Facts

The assessee, a wholly owned subsidiary company of Kinfra receives assistance from Government for the augmentation of infrastructure/facilities in Export Promotion Industrial Parks known as 'Assistance to States for Developing Export Infrastructure and other Allied Activities' (for short, 'ASIDE'). The Government transfers financial assistance through the SG to the assessee for developing infrastructure at Industrial Park. The assessee claims that the funds received under ASIDE scheme since they were provided as 'grant in aid' for augmentation of infrastructure facilities in Export Promotion Industrial Park operated by the assessee. The assessee asserts that the grant provided by the Government under ASIDE is not for acquiring a specific item or particular item but was utilized on need-based in the Industrial Park. The assessee, at the first instance, in its books of accounts credited the grant as capital reserve. According to the assessee, the assistance is a capital contribution under ASIDE from the CG, but not assistance for acquiring a specific asset. The AO, by referring to Explanation 10 of Section 43 held that the grant is a capital reserve and therefore proportionately reduced the grant received from the WDV of fixed assets. The depreciation was therefore disallowed in the final computation of income. Aggrieved with the order, assessee preferred an appeal before Ld. CIT(A) who disallowed the same. Aggrieved with which, the assessee has preferred present appeal before Ld. ITAT.

Ruling

ITAT was of the view disallowed in the final computation of income and directed the AO to redetermine the actual cost by excluding the amount received by the assessee prior to 31-03-1999. This Court further held that apportionment of Rs. 3.75 crores on the WDV of the assets as on 01-04-2008 and also on all the assets of the assessee, for the AY 2008-09 is illegal and stated that the adjustment at best could be against the assets which received the addition from financial assistance received under ASIDE. Therefore, insofar as the AY 2009-10 is concerned, the inclusion of the financial assistance received up to 31-03-1999 is incorrect and contrary to the ratio of PJ Chemicals judgment. Therefore, by excluding assistance received up to 31-03-1999 the balance financial assistance i.e., Rs. 1.51 crores received needs to be reworked. The question as indicated above is answered in favor of the assessee and against the Revenue.

Source: HC, Kerala in Kinfra Export Promotion Industrial Parks Ltd. vs JCIT/ACIT, Kochi dated April 07, 2022 vide [2022] 137 taxmann.com 379 (Kerala)

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Reassessment notice issued on or after 1-4-2021 should comply with new provisions as substituted by Finance Act, 2021

Facts

The petitioner filed his ROI for AY 2016-17 at a total income of Rs. 7,84,730 and thereafter received notices under Section 148. Learned Senior counsel for the petitioner submitted that controversy involved in this petition is squarely covered by division bench decisions of HC of Allahabad in Ashok Kumar Agarwal vs. Union of India. It is further submitted that amended provisions of the 1961 Act apply to every proceeding initiated after 01.04.2021 in which assessment/re-assessment is done and urged that impugned notices are per se without jurisdiction as the procedure contemplated under Section 148A of the Act which is a condition precedent has not been fulfilled.

Ruling

HC held that the cardinal issue which arises for consideration in this petition is whether a notice issued on or after 01.04.2021 u/s 148, without complying with provisions of Section 148 and Section 148A of the Act is valid. The court held that it is cardinal principle of law that law which has to be applied in force in the assessment year unless otherwise provided expressly or by necessary implication and when the statute vests certain power in an authority, it is to be exercised in a particular manner, provided therein. Therefore, the amended provision of Section 148A of the Act would apply in respect of notices issued with effect from 01.04.2021 and erstwhile provisions of Section 14 7 to 151 of the Act, cannot be resorted to as, it has been repealed by the amending Act viz., the 2020 Act. In the instant case, the validity of notice has to be adjudged on the basis of law as existing on the date of notice. The mandatory conditions specified in Section 148A of the Act have not been complied with before issuance of impugned notice and the same has been issued in violation of mandate contained in Section 148 and 148-A of the Act. Therefore, the issue with regard to validity of notice has to be answered in the negative.

Source: HC, Karnataka in Mohammed Mustafa vs ITO dated April 18, 2022 vide [2022] 137 taxmann.com 396 (Karnataka)

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No interfere in proceedings for reassessment of loss from suspicious derivative trade where notice u/s 148 is based on tangible material

Facts

The AO passed the assessment order for the Assessment Year 2016-2017 after considering all the documents regarding derivative transaction and accepted the loss claimed by the petitioner arising out of said derivative transaction. The petitioner was accordingly called upon to show as to why set off of losses of F & O Trading against remuneration and interest earned from partnership firm should not be disallowed and added to your total income of the petitioner. The AO once again called upon the petitioner for the information regarding account statement, demat account, details of broker and contract notes issued by the broker for derivative transaction. The AO was of the opinion that in the capital account net business income had not been credited/debited. The reopening has been done on the basis of specific information which was

not available at the time of assessment proceedings u/s 143(3) There was thus, no change of opinion while initiating the re-assessment proceedings u/s 147(1) as sought to be canvassed by the petitioner. The respondent, however, passed speaking order rejecting the objections filed by the petitioner. The petitioner therefore filed this writ petition.

Ruling

HC held that the petitioner/assessee will have full opportunity to prove his case before the assessing officer in the proceedings of reopening of the assessment u/s 148. HC stated that the opinion expressed by the AO u/s 148 is only a prima facie view taken by the assessing officer for the purpose of further enquiry which can be changed after giving an opportunity of being heard and to demonstrate as to how the belief of assessing officer that the income of the petitioner had escaped assessment was incorrect.

Source: HC, Bombay in Shrikant Phulchand Bhakkad (HUF) vs JCIT dated April 22, 2022 vide [2022] 137 taxmann.com 445 (Bombay)

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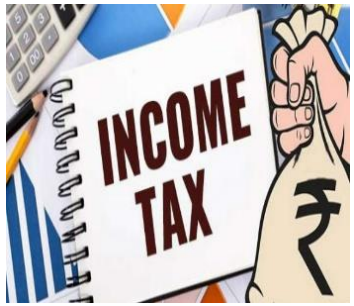
ITAT Rulings

Revenue cannot set off any 'taxable loss' u/s 70 to 80 against tax-exempt incomes covered by Chapter III

Facts

The assessee submitted return of Income on 26-07-2016, declaring a total income of Rs. 17.25 crores along with LTCG (STT paid), LTCG (STT not paid) and STCG. As the Long-Term Capital Gain (STT paid) is exempted u/s 10(38), the assessee claimed carry forward of Long-Term Capital Loss (STT not paid). The Ld. AO completed assessment u/s 143(3) and assessed the income by reducing the quantum of carried-forward losses. Being aggrieved, the assessee preferred appeal to Ld. CIT(A) who upheld the action of Ld. AO and dismissed the appeal of assessee observing that Section 70 nowhere mentions that STCL and LTCL cannot be set off against the exempted LTCG. Being aggrieved by the order of Ld. CIT(A), the assessee has preferred an appeal now before ITAT.

Ruling



ITAT held that having considered the scheme of law as also the interpretation taken in various legal precedents including the binding decision of Hon'ble HC, Gujarat in Kishorbhai Bhikhabhai Virani (Supra), we are inclined to hold that the assessee has rightly claimed the carry forward of Long-Term Capital Loss (STT not paid) and Short-Term Capital Loss without setting off against the exempted Long-Term Capital Gain (STT paid) u/s 10(38). ITAT additionally stated that even if assume, without accepting, that the revenue's contention is correct in setting off losses against exempt income [long term capital gain u/s 10(38)], there would be an absurd outcome on the ground that the lower authorities are not justified in setting off losses against the exempted long-term capital gain thereby reducing the quantum of carry forward of losses claimed by the assessee. The ld. ITAT directed the Ld. AO to allow full carry-forward of losses as claimed by the assessee without set-off against exempted long-term capital gain thereby allowing the appeal of the assessee.

Source: ITAT, Ahmedabad in Mrs. Sikha Sanjaya Sharma vs DCIT dated April 13, 2022 vide [2022] 137 taxmann.com 214 (Ahmedabad-Trib.)

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AO cannot disallow expenditure u/s 143(1)(a)(iv) where opinion in tax audit report is contrary to the view of jurisdictional HC

Facts

While processing the income tax return filed by the assessee, apparently, based on information contained in column 20(b) of the tax audit report under section 44AB(a), which was submitted online, there were certain delays in depositing the provident fund dues vis-a-vis 'the due date for (such) payments'. The sum total of such, as perceived by the tax auditor, delayed payments, aggregating to Rs. 4,24,634, were sought to be disallowed under section 143(1). When the assessee was put to notice, by the DCIT, CPC, in respect of the proposed adjustment to which, the assessee objected through an online communication to the CPC, that as held by the Hon'ble HC, the payments made after the due date under the respective statute but before filing the ITR is also deductible in the COI, and the adjustment in question, therefore, was unsustainable in law. It was thus contended that dehors the observations made by the tax auditor, what was reported as delayed payment in column 20(b) were delayed payments of contributions received from the employees for various funds, as referred to in Section 36(1)(va) vis-a-vis the respective statute, but not vis-a-vis the provisions of the Income Tax Act. The judicial precedents in support of the said contention were pointed out but none of these arguments, however, impressed the AO-CPC who disposed of the objections of the assessee. The efforts to get the intimation under section 143(1) rectified under section 154 did not yield results either. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without any success. The assessee thereafter is in appeal before the Ld. ITAT.

Ruling

ITAT held that we are of the considered view that the impugned adjustment in the course of processing of return under section 143(1) is vitiated in law, and we delete the same stating the fact that our observations remain confined to the peculiar facts before us, that our adjudication is confined to the limited scope of adjustments which can be carried out under section 143(1) and that we see no need to deal with the question, which is rather academic in the present context, as to whether if such an adjustment was to be permissible in the scheme of Section 143(1), whether the insertion of Explanation 2 to Section 36(1)(va), with effect from 1st April 2021, must mean that so far as the AYs prior to the AY 2021-22 are concerned, the provisions of Section 43B cannot be applied for determining the due date under Explanation (now Explanation 1) to Section 36(1) (va). That question, in our humble understanding, can be relevant, for example, when a call is required to be taken on merits in respect of an assessment under section 143(3) or under section 143(3) read with section 147 of the Act, or when no findings were to be given on the scope of permissible adjustments under section 143(1)(a)(iv). That is not the situation before us. We, therefore, see no need to deal with that aspect of the matter at this stage.

Source: ITAT, Mumbai in Kalpesh Synthetics (P.) Ltd. vs DCIT dated April 27, 2022 vide [2022] 137 taxmann.com 475 (Mumbai)

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