VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Depreciation on goodwill allowable arising from approved amalgamation scheme on the basis of Smifs Securities

Facts

The Assessment Officer had added a sum of INR 6.17 crores on account of disallowance of depreciation on goodwill that was created as a result of amalgamation. Aggrieved by the aforesaid, the appellant had preferred an appeal before the CIT (Appeals). The CIT (Appeals) found that since goodwill had come to be created by virtue of the merger in terms of the Scheme approved by the Court, depreciation on goodwill to the extent of INR 6.17 crores was correctly claimed by the appellant. It was this decision of the CIT (Appeals) which was assailed by the appellant's. The Department went into appeal before the ld. Tribunal wherein it was categorically held that goodwill is an intangible asset which would clearly fall within the ambit of Explanation 3 to Section 32(1). The Tribunal ultimately upheld the depreciation claimed in terms of Section 32 and upheld the deletion of disallowance. Aggrieved, the Revenue went into appeal before the High Court. The learned counsel appearing in support of the appeal contended that it would be the provisions of Section 49 which would apply and that both the CIT (Appeals) as well as the ITAT have clearly erred in holding otherwise. The ld. Counsel also referred to the definition of "cost of acquisition" as spelt out in Section 55(2) and which had defined that expression to also include goodwill of a business or profession or a trademark or brand name associated with the business or profession or any other intangible asset. It is in the aforesaid context that learned counsel for the appellant had sought to rely upon Section 49 and more particularly Section 49(1)(e) thereof.

Ruling

High Court in the present case held that however, clearly loses sight of the fact that Section 47 in express terms excludes the transfer of a capital asset in terms of a scheme of amalgamation. We further find that the provisions of the Act referred to by learned counsel for the appellant are placed in a Chapter dealing with the "Capital Gains". That Chapter itself pertains to profits or gains arising from the transfer of a capital asset. However, it is well settled that a transfer in terms of a scheme of amalgamation which is sanctioned is accomplished by operation of law as opposed to an act of parties. It is in that backdrop that the decision in Smifs assumes significance. The judgment rendered ***by the Supreme Court in Smifs*** clearly recognizes goodwill to be an intangible asset and on which depreciation can clearly be claimed in terms of Section 32(1). Accordingly, the appeal filed by the Revenue was dismissed.

Source: High Court, Delhi in the case of PCIT vs M/s Eltek SGS Pvt. Ltd. vide ITA 475/2022 on August 01, 2023

Section 153 limitation binding despite Section 144C "complete code"; Follows Madras HC's ruling in Roca Bathroom

Facts

The appellant is a company incorporated under the relevant laws of Cayman Island and head quartered in Dubai, United Arab Emirates and is engaged in the business of shallow water drilling for clients engaged in the oil and gas industry. The Appellant filed its Return of Income for the AY declaring a total loss of INR 120.18 crores. The loss had been arrived at by exercising its option not to be assessed on the presumptive basis of taxation as per Section 44BB(3) and computing its income under the regular provisions of the Act. Appellant's Return of Income was selected for scrutiny u/s 143(2). In the course of assessment proceedings, notices were issued along with the detailed questionnaire to which the appellant duly responded. Respondent no.1 passed draft assessment order dated 26th December 2016 invoking the provisions of Section 145 and rejected Appellant's books of account. Despite Appellant having exercised its option, Appellant's income from providing services in connection with prospecting for or extraction or production of mineral oils has been effectively computed u/s 44BB(1), i.e., at 10% of its gross receipts. Appellant's total income accordingly, was computed at INR 4.35 crores. The appellant filed its objections before the Dispute Resolution Panel against draft assessment order, in accordance with Section 144C. DRP did not accepted Appellant's case and by an order gave its direction. Based on that, Respondent no.1 passed a final assessment order u/s 143(3) r.w.s 144C(13).

Aggrieved by the said final assessment order, appellant filed an appeal before the ld. Tribunal who remanded the matter to the AO for fresh adjudication. Various allegations were made against Appellant including non-submission of documentary evidence to show the state of the rig at the time of purchase, genuineness of the cost of acquisition etc. including not following accounting standard-29 or non-provision of TDS details were also made. Thereafter Respondent no. 1 passed a draft assessment order to which the appellant filed the objections. Finally, the impugned order dated 28.09.2021 has been passed rejecting Appellant's books of accounts and effectively computing Appellant's income based on the computation methodology provided in Section 44BB(1), despite the fact that Appellant had opted out from the same. Aggrieved, the appellant had preferred an appeal before the HC.

Ruling

HC observed that a similar non-obstante clause is also used in Section 144C(4) with the same limited purpose to imply, even though there might be a larger time limit u/s 153, once the matter is remanded to AO by the ITAT u/s 254, the process to pass final order u/s 144C has to be taken immediately. HC also stated that there is a limit prescribed under the statute for the AO and therefore, it is his duty to pass an order in time. After 30th September 2021, the AO will have no authority to pass any final assessment order in this Case. In the circumstances, since no final assessment order can be passed in the present case as the same is time barred, the Return of Income as filed by Appellant be accepted. This would however, not preclude the Revenue from taking any other steps in accordance with law. The petition filed by the appellant was accordingly disposed of.

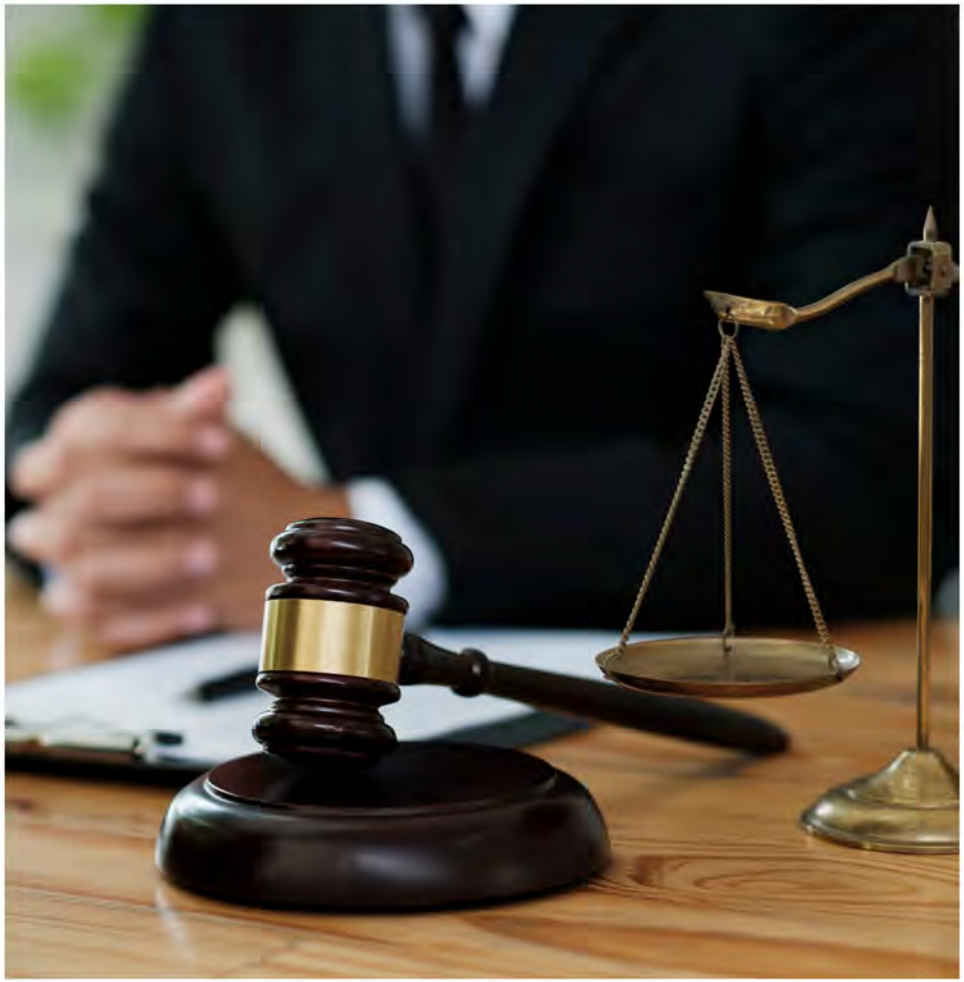
Source: High Court, Bombay in the case of Shelf Drilling Ron Tappmeyer Limited vs ACIT, PCIT (International Taxation) & Union of India vide Writ Petition No. 2340 of 2021 on August 04, 2023

Revenue to re-decide condonation of ITR-filing delay after 25 years by reconstructing record

Facts

The appellant filed two Income Tax returns for the AYs 1994-95 & 1995-96 on 30-03-98 with a delay of 1095 days & 730 days respectively, accompanied with delay condonation applications. The last dates of filing of those returns were 30-06-94 & 30-06-95 respectively. The Learned counsel for the appellant has stated that the Board u/s 119(2)(b) has been issuing circulars from time to time authorizing its officials to condone the delay. Learned counsel for the appellant also submitted, relying upon a circular dated 09-06-15, that similar circular was in existence at the time when the appellant had filed ITRs along with the delay condonation applications. It is the contention of the learned counsel for the appellant that if the delay condonation application had been allowed in the year 1998 itself within 6 months as is provided in various circulars, then the record would have been available and the case would have been decided on merits. Learned counsel for the appellant has submitted that no notice etc. was served upon the appellant for presenting himself while the order was passed. Had that been done, the appellant would have supplied the receipts of the TDS etc.

Learned counsel for the Department, in reply, however, submitted that the returns were not filed within the limitation provided i.e. till 30-06-94 and 30-06-95 respectively and therefore they had become nonest Returns, which could not be looked into. However, learned counsel for the Department has submitted that if another opportunity is given to the Department to pass an order, then every effort shall be made to reconstruct the record after including the TDS receipts etc. which could be obtained from the appellant and he has further submitted that the appellant shall also be afforded an opportunity of proper hearing.



Ruling

Having heard the learned counsel for the appellant and the Department, we are of the view that when the delay condonation application was filed on 30-03-98 then the applications ought to have been decided within the time provided by the Act. The Court is definitely of the view that at that point of time all the records would have been available. However, in view of the submission made by the learned counsel for the Department, we are of the view that the order dated 24-10-19, which has been passed after more than 20 years of the filing of the applications on the ground that the records were not available, deserves to be set aside. The order is accordingly quashed. HC also directed the Principal Commissioner, Income Tax Department -I, Agra to decide the applications of the appellant which were filed on 30-03-98 afresh. While deciding the application, every effort shall be made to get the record re-constructed with the help of the appellant and all available records. With these observations, the writ petition is disposed of.

Source: High Court, Allahabad in the case of Sri Kailash Chand Agarwal vs PCIT vide Writ Tax No. 976 of 2022 on August 11, 2023

Amazon's receipts from "cloud computing services" neither FIS/FTS nor royalty

Facts

The appellant is a foreign company and a tax resident of USA. The appellant provides 'standard and automated' cloud computing services/AWS Services to its customers around the globe. The customers are required to enter into a standard contract electronically with the appellant. For the relevant AYs, the Department received an information from the office of ITO Ward-3(1)(2), International Taxation, that during the verification proceedings u/s 201/201(1A) in the case of M/s. Snapdeal Private Limited, it is observed that the appellant had received an amount of INR 30.95 crores without TDS thereon u/s 195 even though the consideration so received is chargeable to tax both under the definition of royalty under the provisions of section 9(1)(vi) and under the provisions of the India-USA Double Taxation Avoidance Agreement. Accordingly, notice u/s 148 was issued to the appellant on 31-03-21 in response to which the appellant filed its return of income for both the AYs under consideration declaring Nil income. The appellant during the proceedings submitted that it is based in the US and is engaged in the business of providing standard and automated cloud computing services to customers around the world. During AY 2014-15 & AY 2016-17, appellant had received an amount of INR 247.68 crores & INR 1007.81 crores respectively from its customers in India. These receipts relate to providing standard and automated cloud computing services to its customers.

In response to the SCN, the appellant filed detailed submissions alleging that the receipts are neither royalty nor fee for technical services both under the Act as well as the India-USA DTAA. The submissions of the appellant were considered but not found tenable by the Ld. AO. The Ld. AO proceeded to pass the draft assessment order proposing to tax the entire receipts treating such receipts to be taxable in India as royalty as well as Fees for Technical Services both under the Act as well as India-USA DTAA. The appellant filed objections before the Ld. Dispute Resolution Panel who upheld the initiation of re-assessment proceedings and confirmed the additions proposed in the draft assessment order. Pursuant to which, the ld. AO passed the final assessment order u/s 147 r.w. section 144C(13) assessing the total income of the appellant at INR 247.68 crores & INR 1007.81 crores respectively being amount received as "cloud service fee" from customers in India towards cloud computing services rendered by the appellant from outside India treating the same as royalty and FTS/FIS under the provisions of the Act and the India-USA DTAA. Aggrieved, the appellant is in appeal before the Tribunal challenging the final assessment order of the Ld. AO and all the grounds of appeal relate thereto. The only issue which has been pressed is whether the "cloud service fee" received by the appellant from customers in India is liable to tax in India being in the nature of royalty and FTS/FIS under the provisions of the Act and the India-USA DTAA as well.

Ruling

ITAT have considered the submissions of the Ld. DR on the impugned issue. However, ITAT noted that the Ld. DR has not made any reference or submissions with regard to the decision of the Hon'ble Delhi High Court and several decisions of the Hon'ble Tribunal relied upon by the appellant wherein it has been categorically held that consideration for cloud computing services is not chargeable to tax in India. ITAT have also considered various decisions relied upon by the Ld. DR and in its considered view these decisions do not support the Revenue's contentions being distinguishable on facts than that of the appellant. ITAT, in the light of the above factual matrix and legal propositions and in view of the various judicial precedents, held that the payments received by the appellant from Indian Customer(s) from rendering AWS Services do not qualify as royalty under Article 12(3) of the India-USA DTAA and hence are not taxable in India.

Source: ITAT, New Delhi in the case of Amazon Web Services, Inc. vs ACIT vide ITA Nos. 522 & 523/Del/2023 on August 01, 2023

Demonetization deposits not taxable where Appellant maintained cash for business operations & exigencies

Facts

The appellant company is engaged in the business of operation of ships for exploitation of mineral oil for ONGC and also for providing infrastructure facilities at New Mangalore Port. The ld. AO, from the perusal of computation sheet of the appellant, noticed that the appellant had claimed a sum of INR 133.99 crores as exempt shipping income u/s 115VI while computing income under normal provisions of the Act. Similarly, a sum of INR 189.50 crores was reduced by the appellant as exempt income while computing book profit of shipping income u/s 115JB. The appellant claimed the benefit of Tonnage Tax Scheme u/s 115VP/115VR. The ld. AO rejected the claim of benefit of Tonnage Tax Scheme.

The ld. CIT(A), by placing reliance on the order passed by his predecessor for AY 2016-17, deleted the disallowance made by the ld. AO and granted the benefit of Tonnage Tax Scheme to the appellant. Accordingly, relief was granted to the appellant for claim of exemption both under the normal provisions of the Act as well as in the computation of book profit u/s 115JB. Aggrieved, the Revenue is in appeal before ITAT.

Ruling

ITAT in appellant's own case in ITA No.6872/Del/2018 and in ITA No.5375/Del/2019 for AYs 2015-16 and 2016-17 respectively, vide order dated 25-11-22, had decided the very same issue in favour of the appellant. Respectfully following the same, the ground raised by the Revenue was dismissed. As far as applicability of Tonnage Tax while computing the book profit u/s 115JB is concerned, ITAT held that the provisions of section 115VO specifically provides that the book profit or loss derived from the activities of the Tonnage Tax Company referred to in section 115VI(1) shall be excluded from the book profit of the company for the purpose of section 115JB. Hence, the said ground raised by the Revenue is dismissed.

Source: ITAT, Delhi in the case of DCIT vs Jagson International Ltd. vide ITA No.1303/Del/2022 on August 04, 2023

ITAT upholds revision as AO failed to apply mind on Sec. 43CA safe harbour applicability

Facts

The appellant is engaged in the business of construction and development of the property. During the year under consideration, the main source of income was from its construction business. The assessment in the hands of the appellant was completed by the AO u/s 143(3). Upon examination of the record, learned PCIT noticed that the AO has not examined following issues:

- There was difference between the Stamp duty value and the Agreement value in respect of eight flats sold by the appellant during the year under consideration which worked out to INR 13.75 lacs in terms of section 43CA of the IT Act.
- The appellant has taken unsecured loan from a company whose registration has been cancelled by MCA.
- Hence the learned PCIT took the view that the assessment order passed by the AO is erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263.

With regard to the first issue, the appellant submitted that the difference between the stamp duty value and the agreement value in respect of seven properties is less than the 10% and hence as per the proviso inserted by the Finance Act, 2020, the difference need not be assessed as income of the appellant u/s 43CA. With regard to the remaining property, it was submitted that the advance was received in 2013 itself and hence the agreement value should be compared with the stamp duty value prevailing in 2013. With regard to the loan taken from the company whose registration has been cancelled by MCA, the appellant did not furnish any explanation.

The Learned PCIT noticed that the proviso to section 43CA, which provides for not making any addition if the difference between the sale consideration and stamp duty value does not exceed 5% of the consideration was inserted w.e.f. 01-04-19. The above said concession of 5% was increased to 10% w.e.f. 01-4-21. Accordingly, the ld. PCIT held that the above said proviso will not be applicable to AY 2018-19, i.e., the year under consideration, since the above said concession was inserted in the statute w.e.f. 01-04-19 only. Accordingly, ld. PCIT set aside the assessment order and directed the AO to pass a fresh order after considering the above said issues. Aggrieved by the order passed by ld. PCIT, the appellant has filed this appeal.

Ruling

The ld. ITAT noticed that the AO has called for the details of the project executed by the appellant, but failed to examine the sale value of flats in terms of sec. 43CA. ITAT also noticed that the ld. PCIT has specifically observed that the proviso to sec.43CA permitting difference of 10% did not exist in the year relevant to AY 2018-19, i.e., it is the view of the ld. PCIT that the amendment brought in sec. 43CA with effect from AY 2019-20 will not apply to the year under consideration. ITAT held that with regard to the claim that the advance amount received in respect of one property in the year 2013 itself, it is the view of ld. PCIT that the appellant has failed to furnish copy of Agreement for sale entered by the appellant with the concerned buyer. We notice that it is not the case here that the above said contentions of the appellant have been examined by the AO and a particular view was taken by him. In the absence of application of mind by the AO on the issue of applicability of provisions of sec. 43CA, we are of the view that the ld. PCIT was justified in initiating revision proceedings on the said issue.

ITAT w.r.t. the second issue, noticed that the AO has asked a specific query and the loan was taken from M/s Anurodh Exports P Ltd in an earlier year and hence the taxability, if any, of the above said loan will arise in the earlier year only and not during the year under consideration. As submitted by ld. DR, the repayment of above said loan, even if the above said company is struck off, will not give rise to any tax incidence, meaning thereby no prejudice is cause to the revenue for the year under consideration on account of these transactions. Accordingly, ITAT is of the view that the order passed by ld. PCIT on this second issue is liable to set aside. We order accordingly. In the result, the appeal filed by the appellant is partly allowed.

Source: ITAT, Mumbai in the case of Shree Laxmi Enterprises vs PCIT vide ITA No 1265/Mum/2023 on August 08, 2023

ITAT deletes penalty for defects in 'Reportable Accounts Statement' since rectified timely

Facts

The KEB Hana Bank filed the original Statement of Reportable Account in Form-61-B for CY 2017, 2018 & 2019 on 30-05-18, 25-05-19 & 29-05-20 respectively. From the information available, the Prescribed Authority has noticed that the Reporting Entity had not reported 16 accounts in the statements filed for CY 2017, 2018 & 2019. Accordingly, the above discrepancy was brought to the notice of the Reporting Entity and requested to rectify and furnish the details for the same. After considering the replies of the Reporting Entity, the Prescribed Authority observed that the Statement of Reportable Account furnished were inaccurate on account of omission of one saving of Mr. Sinmo Soan (Account No. 8206000515) and 15 Term Deposit accounts of the same person, a notice u/s 274 r.w.s. 271FAA was issued to the Reporting Entity requiring it to show-cause as to why the penalty should not be levied against the Reporting Entity for furnishing inaccurate statement of reportable accounts. After considering the submissions of the Reporting Entity, the Prescribed Authority completed the penalty order by levying penalty of INR 50,000 each u/s 271FAA for filing inaccurate Statement of Reportable Account. The Reporting Entity carried the matter in appeal before the ld. CIT(A) who confirmed the penalty levied for all the years under appeal.

On being aggrieved, the Reporting Entity is in appeal before the Tribunal. The ld. Counsel for the Reporting Entity had submitted that the defects pointed out by the Prescribed Authority were duly rectified and revised/rectified Form 61-B was filed well within the time allowed u/s 285BA(4) and therefore, the penalty is not leviable u/s 271FAA. Thus, the ld. Counsel prayed for deleting the penalty levied for all the years.

Ruling

In this case, ITAT held that the Prescribed Authority has notified the discrepancies vide his letter to the Reporting Entity to rectify the defects and accordingly, the revised/rectified Form 61-B was filed, which appears to be well within the time allowed u/s 285BA(4). Therefore, the ld. CIT(A) was not correct in confirming the order of the Prescribed Authority that the appellant has not rectified the defects within time. ITAT stated that we find that the provisions of Section 285BA(4) mandate that the defect should be rectified within a period of one month from the date of such intimation and in the present case, the Reporting Entity has rectified the defects within the time limit as provided. In view of the above, ITAT set aside the order passed by the ld. CIT(A) and deleted the penalty levied u/s 271FAA for the AYs 2018-19, 2019-20 and 2020-21.

Source: ITAT, Delhi in the case of DCIT vs Jagson International Ltd. vide ITA No.1303/Del/2022 on August 04, 2023

Revenue bound to give advance tax credit inadvertently left unclaimed in the ITR

Facts

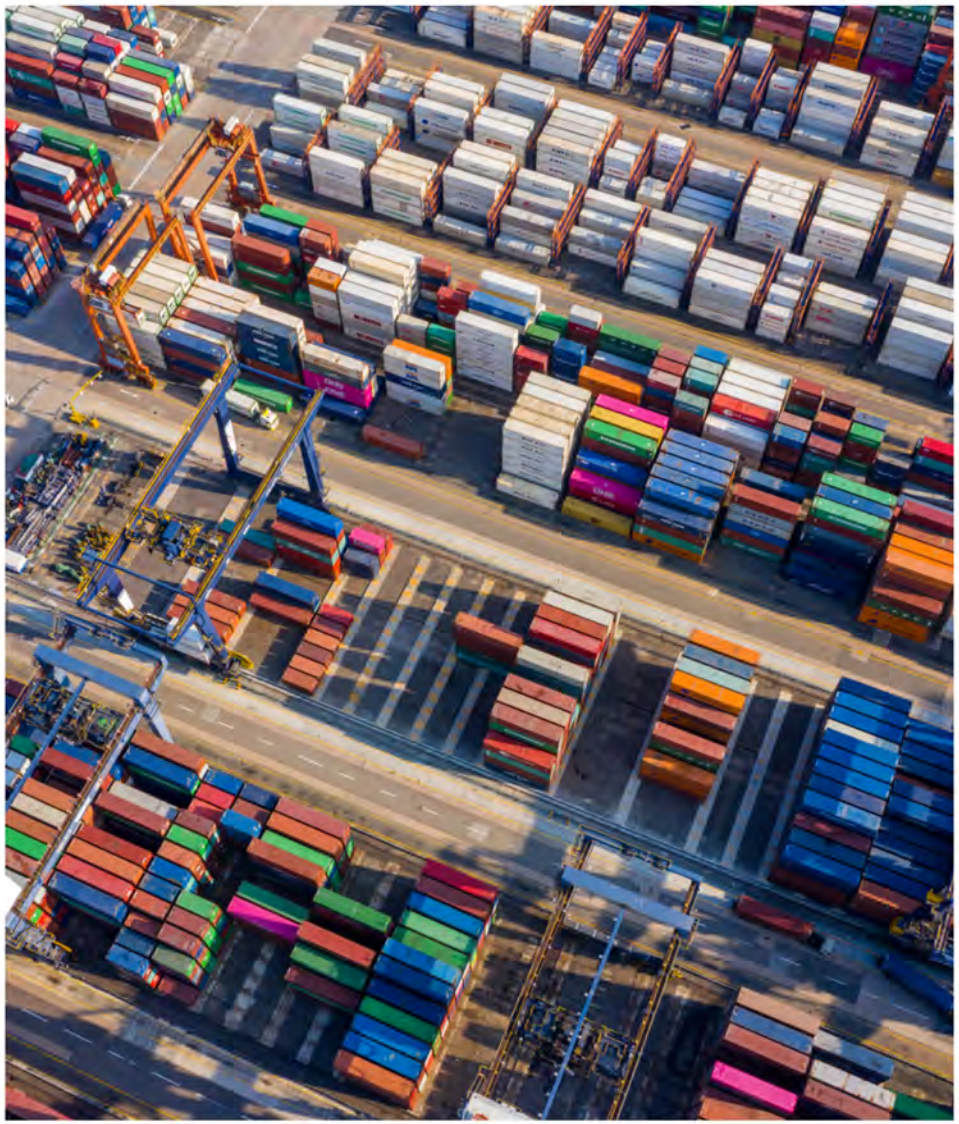
The brief facts of the case are that the appellant is engaged in the business of providing freight forwarding and supply chain management services to global customers of DAMCO Group. For the year under consideration, the appellant filed its return of income on 30/11/2013 declaring a total income of Rs. 18,58,74,940. The return filed by the appellant was selected for scrutiny and vide order dated 28/04/2017 the total income of the appellant was assessed at Rs. 38,23,56,290. In appellate proceedings, the Tribunal granted partial relief to the appellant. Upon receipt of the order giving effect to the Tribunal's direction, the appellant noticed that the credit for advance tax amounting to Rs. 1,10,00,000 paid was not claimed in the return of income. As the due date for filing the revised return of income had expired, the appellant approached the AO ("AO") by filing the rectification application u/s 154 of the Act. Vide order dated 12/08/2020, the AO rejected the claim of the appellant for grant of credit of advance tax paid on the basis that the claim of the appellant is made after a lapse of almost 3 years after completion of the assessment. The learned CIT(A), vide impugned order, dismissed the appeal filed by the appellant on the basis that there is no mistake apparent from the record in the order passed by the AO giving effect to the order of the Tribunal, and thus the order of the AO cannot be interfered with u/s 154 of the Act. Being aggrieved, the appellant is in appeal before the ld. ITAT.

During the hearing, the learned Authorised Representative ("learned AR") submitted that the appellant has filed an application before CBDT u/s 119(2)(b) of the Act for condonation of delay in claiming the advance tax credit, which is pending consideration. The learned AR also placed on record a copy of the challan payments of advance tax amounting to Rs. 1,10,00,000 as well as relevant extracts of Form 26AS wherein the aforesaid payment is duly reflected. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and submitted that this claim was neither made in the return of income nor any revised return of income was filed by the appellant and therefore the claim has been correctly rejected.

Ruling

We have considered the submissions of both sides and perused the material available on record. From the perusal of the challan of payment of advance tax, we find that an advance tax of Rs. 44 lakh was paid by the appellant on 14/06/2012, and an advance tax of Rs. 66 lakh was paid by the appellant on 13/09/2012. We find that the aforesaid payments are duly reflected in the relevant extracts of Form 26AS furnished by the appellant. It cannot be disputed that the claim made by the appellant was limited to the grant of credit of the aforesaid advance tax paid during the year under consideration and the same doesn't pertain to fresh claim of any allowance/deduction. It is not a case wherein the appellant sought credit of TDS which needs to be verified with documentation and correlated with the corresponding income. Further, section 219 of the Act also mandates that the credit of advance tax shall be given to the appellant in the regular assessment. Thus, the inadvertence on the part of the appellant to claim the credit for the advance tax while filing its return of income or filing the revised return of income in this regard does not absolve the AO from its statutory duty as per section 219 of the Act to grant the credit in the regular assessment, particularly when the said amount is duly reflected in Form 26AS which forms part of the record of the Revenue. Therefore, we are of the considered view that the AO erred in not rectifiying this apparent mistake when the same was pointed out by the appellant vide its application u/s 154 of the Act. Accordingly, we direct the jurisdictional AO to grant the credit of advance tax of Rs. 1,10,00,000 paid by the appellant during the financial year 2012-13. As a result, the impugned order passed by the learned CIT(A) is set aside and the grounds raised by the appellant are allowed.

Source: ITAT, Mumbai in the case of Damco India Pvt. Ltd. vs CIT (Appeals) vide ITA No 140/Mum/2022 on August 10, 2023



Section 54 exemption allowable despite old agreement as construction completed within prescribed 3 years

Facts

The appellant who is a NRI had claimed exemption of INR 4.04 crores u/s 54 in her return filed for AY 2020-21 declaring income of INR 62.77 lacs. The ld. AO served upon the appellant SCN as to why her said claim be not disallowed for want of requisite documentary evidence of purchase/construction of property to which the appellant replied that she had sold her 50% share in one residential house for INR 5.88 crores during the FY 2019-20 and earned capital gain of INR 4.04 crores which she claimed as exempt u/s 54. The appellant further submitted that she had entered into agreement for construction of a residential house in Gurgaon "DLF" in FY 2015-16 for INR 37.39 crores. During the AY 2020-21, the appellant paid 50% of her share i.e. INR 2.55 crores including TDS of INR 4.49 lacs to DLF towards the construction of the residential property and also repaid her 50% share of entire loan of INR 7.76 crores taken from ICICI for purpose of the said residential house before filing the return.

The explanation of the appellant was not acceptable to the ld. AO, and according to him, the appellant sold her property on 02-03-20. Therefore, to claim the benefit of deduction u/s 54, she was required to purchase a property within one year before or two years after the date on which the transfer took place or construct one residential house within three years after the date of transfer. The ld. AO stated that the appellant did not do so. The ld. AO further observed the repayment of home loan had been made within the prescribed period specified in section 54, the home loan itself was taken much earlier on the basis of the Apartment Buyers Agreement for the property purchased by her. The ld. AO stated that only part payment has been made during the prescribed period u/s 54 for the property that was booked in 2015. He, therefore, held that the appellant is not eligible for deduction u/s 54 which he disallowed resulting in the impugned addition to the income of the appellant. Accordingly, he passed draft and thereafter the final assessment order u/s 144C. This has brought the appellant before the Tribunal and all the grounds of appeal relate thereto.

The ld. AR before the Tribunal further submitted that the appellant along with her husband entered into Apartment Buyers Agreement for purchase of under construction residential flats in Gurgaon "DLF" on 18-02-16 and the builder handed over possession of bare shell flat on 01-03-21. Thereafter an expenditure of INR 1.64 crores was incurred during AY 2021-22 and 2022-23 to make the flat habitable. He also submitted that acquisition of under construction property amounted to construction of new residential house. According to him, where the construction is completed/possession is handed over within three years from the date of sale, it would meet the requirement of section 54 notwithstanding that the agreement was signed before the date of sale of residential property i.e. the condition for construction of house/purchase of house will stand satisfied on grant of possession letter.

ITAT observed from the builder's letter dated 01-03-21 that the condition of construction of one residential house within a period of three years from the date of sale is satisfied. Merely because the appellant had entered into Apartment Buyer's Agreement for purchase of under construction residential house prior to the date of sale, the benefit of deduction u/s 54 cannot be denied. ITAT relied upon the decision of the Hon'ble Delhi HC in CIT vs. Bharati Mishra (2014) 265 CTR 374 (Delhi) wherein it has been held that there is no stipulation in section that construction must begin after date of sale of the old assets. The appellant could not be denied benefit of deduction on the ground that construction of house had commenced before sale of the old asset. Another objection of the ld. AO is that the appellant made payment to the builder towards under construction property before date of sale of the old residential property wherein he held that payments made towards under construction property before date of sale of the residential property would qualify for purposes of section 54.

Yet another objection of the ld. AO relates to home loan taken by the appellant. Admittedly, loan has been utilized for payment towards under construction property and the ld. AO accepts that the repayment of home loan has been made within the prescribed period in section 54. Therefore, objection regarding repayment of home loan also does not survive. Accordingly, the appeal was decided in favour of the appellant.

Source: ITAT, Delhi in Reema Chawla vs ACIT (International Tax) vide ITA No 398/Del/2023 on August 11, 2023

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