

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

S. 36(1)(va), 43B FA 2021 amendments in sections 36(1)(va) & 43B apply prospectively w.e.f. AY 2021-22

An amendment made to a taxing statute can be said to be intended to remove hardship only of the assessee and not of the Department. The amendment brought in the statute i.e., by Finance Act, 2021, the provisions of Section 36(1)(va) r.w.s. 43B of the Act amended by inserting Explanation 2 is prospective and not retrospective. Hence, the amended provisions of Section 43B r.w.s. 36(1)(va) of the Act are not applicable for the assessment year 2018-19 but will apply from assessment year 2021-22 and subsequent assessment years. Adyar Ananda Bhavan Sweets India (P.) Ltd. v. ACIT [2022] 134 taxmann.com 56 (Chennai - Trib.)

S. 40(A) Amounts not deductible

The gallowage fee, licence fee and shop rental (kist) with respect to FL-9 and FL-1 licences granted to the appellant will, squarely fall within the purview of Section 40(a)(iib) of the Income-tax Act, 1961. The surcharge on sales tax and turnover tax, is not a fee or charge coming within the scope of Section 40(a)(iib)(A) or 40(a)(iib)(B), as such same is not an amount which can be disallowed under the said provision. Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. ACIT [2022] 134 taxmann.com 11 (SC)

S. 80P Deduction available to Co-operative Society

The provisions of Section 80P offers tax deduction in respect of income of Co-operative Societies which is enacted with a laudable object of promoting Co-operating moment. Such benefit cannot be denied to the so called Co-operatives under the Souharda Act merely on hyper technicalities. The interpretation given by the Revenue to Section 2[19] of the Act is untenable. A harmonious reading of the said provisions would indicate that Co-operative Society registered under the Co-operative Societies Act, 1959 alone is not the Cooperative Society for the purposes of the Income Tax Act, as the phrase 'or' employed with the following words 'under any other law for the time being in force in any State for the registration of Co-operative Society' if read, Co-operative Societies registered under the Souharda Act which is a State enactment would certainly be construed as Co-operative Society coming within the ambit of Section 2[19]. Income Tax Department v Karnataka State Souharda Federal Co-Operative Ltd. [2022] 134 taxmann.com 170 (Karnataka)

S. 144B Personal hearing mandatory

After all confidence and faith of the public in the justness of the decision making process which has serious civil consequences is very important and that too in an authority/forum that is the first point of contact between the assessee and the Income Tax Department. The identity of the assessing officer can be hidden/protected while granting personal hearing by either creating a blank screen or by decreasing the pixel/density/resolution.

The argument of the Revenue that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing. The classification made by the Revenue by way of the Circular dated 23rd November, 2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the Act. The word "may" in Section 144B(viii) should be read as "must" or "shall" and requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. An assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case. Bharat Aluminium Company Ltd. v. UOI [2022] 134 taxmann.com 187 (Delhi)

S. 144B Final assessment order is same as draft assessment order

The impugned assessment order is an exact reproduction of the draft assessment order. Nothing as pointed out by the assessee has been taken into consideration. Accordingly, the impugned assessment order is quashed and set aside. The matter is remitted for de novo consideration to the Assessing Officer. The Assessing Officer shall hear the assessee once again and look into the various replies filed by the assessee which are on record and pass an appropriate reasoned order in accordance with law Darshan Enterprise v. CIT [2022] 134 taxmann.com 188 (Gujarat)

S. 148 Issue of reassessment notice after 1-4-2021

Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void. Accordingly all the notices under Section 148 of the Income Tax Act after 1-4-2021 are quashed. However the Assessing Officers can initiate fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by Finance Act, 2021 and after making compliance of the formalities as required by the law. Manoj Jain v. UOI [2022] 134 taxmann.com 173 (Calcutta)

S. 148 Issue of notice without recording reasons appropriately

The AO has issued notice under section 148 and the reasons recorded for issue of notice show total non-application of mind. Even approval for issue of notice by commissioner was granted mechanically without applying mind to reasons recorded. Chairman, CBDT, may formulate a scheme whereby the officers are trained how to apply their mind and what all points should be kept in mind while recording the reasons. The Chairman, CBDT may also advise the Commissioners not to grant approval under Section 151 of the said Act mechanically but after considering the reasons carefully and scrutinizing the same. Sharvah Multitrade Company (P.) Ltd. v. ITO [2022] 134 taxmann.com 134 (Bombay)

S. 148 Reopening based on same facts

The assessee had fully and truly disclosed all material facts necessary for the purpose of assessment which are wrongfully alleged as not disclosed fully and truly. Not only material facts were disclosed by the assessee truly and fully but they were carefully scrutinized and figures of income as well as deduction were reworked carefully by the Assessing Officer. In the reasons for re-opening, the Assessing Officer has in fact relied upon the annual report and audited P & L A/c and balance sheet and he admits "..... various information/material were disclosed." But according to the new Assessing Officer, the fact that other service charges were inseparably connected to the letting out of the building of the assessee is not acceptable. When on consideration of material fact one view is exclusively taken by the Assessing Officer it would not be open to re-open the assessment based on the very same material with a view to take another view. Upal Developers (P.) Ltd. v. DCIT [2022] 134 taxmann.com 113 (Bombay)