

Direct Tax – Recent Judgment

CA. Paras Savla, CA. Ketan Vajani

S. 14A No room for presumption under Income-tax

The proportionate disallowance of interest is not warranted, under Section 14A of Income Tax Act for investments made in tax free bonds/ securities which yield tax free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments.

There is no room for presumption and nothing can be taken to be implied. The tax an individual or a corporate is required to pay, is a matter of planning for a tax payer and the Government should endeavour to keep it convenient and simple to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue. South Indian Bank Ltd. v. CIT [2021] 130 taxmann.com 178 (SC)

S. 24(b) Interest on borrowed funds for purchasing residential property in absence of possession

Insofar the determination of the “annual lettable value” of a property is concerned, the same as per Sec. 22 r.w Sec. 23 of the Act is dependant on the “ownership” of the property, irrespective of the fact whether the assessee has taken the possession of the same or not. Although, as per the plain literal interpretation of Sec. 24(b) of the Act there is no bar on an assessee to claim deduction of interest payable on a loan taken for purchasing a residential property, though, the possession of the same might not have been vested with him - Abeezer Faizullahoy v. CIT [2021] 130 taxmann.com 156 (Mumbai - Trib.)

S. 41(1) Remission & Cessation of liability when recovery proceedings pending before judicial forum

When the proceedings with respect to the recoveries of the amounts were pending in the judicial forums and by no stretch of logic, it can be said that these amounts ceased to be payable by the assessee. It is only elementary that in order to bring an amount to tax u/s.41(1)(a), three fundamental conditions are to be satisfied, but the very foundational condition is that there has to be benefit in respect of such trading liability by way of ‘remission and cessation’ and clearly that condition was not satisfied atleast in this year.

It’s a pity that sometimes the departmental appeals are filed without carefully looking at undisputed foundational facts in a routine manner. In the present case, even though the Assessing Officer is in appeal before us, the foundational facts are not even in disputes and these foundational facts indicate that there was no remission or cessation of liability in the relevant previous year. Yet, the Assessing Officer is in appeal before us. That does not make any sense. We only hope that the Income-tax Authorities are more careful in taking a call on which decisions needs to be pursued in further appeals - DCIT v. Surbhit Impex (P.) Ltd. [2021] 130 taxmann.com 315 (Mumbai - Trib.)

S. 50C, 56(2)(vii)(b)(ii) Difference in agreement value and stamp duty value

Section 50C or for that matter section 56(2)(vii)(b)(ii) are identical provisions. Only difference being, 50C is applicable to the seller of an immovable property, whereas, the later provision is applicable to

the buyer of the property. Therefore, a benefit given to a seller of the property in respect of marginal variation cannot be denied to the buyer of the property, since, they stand on the same footing. If the difference in valuation between the value determined by the stamp duty authority and the declared sale consideration is less than 10%, no addition can be made under section 56(2)(vii)(b)(ii) of the Act. Further it has been consistently expressed that the view that since the aforesaid amendments made by Finance Act, 2018 with effect from 01-04-2019 are curative in nature and beneficial provisions, it would apply retrospectively. Joseph Mudaliar v. DCIT [2021] 130 taxmann.com 250 (Mumbai - Trib.)

S. 70 Set off of losses resulting into revenue loss cannot be considered as illegitimate tax planning

The benefit of this long term capital loss could not be declined to the assessee, as long as transaction has been actually effected, only on the ground that if the assessee had not taken these proactive measures, even if that the sale of shares can be described as a proactive measure, he would have paid more taxes. The assessee may so end up saving taxes but then that is perfectly legitimate. The Assessing Officer cannot disregard a transaction just because it results in a tax advantage to the assessee. Just as much as we cannot legitimize and glorify tax evasion through colourable devices and tax shelters, we cannot also deprecate and disapprove genuine tax planning within the framework of law. The line of demarcation between what is permissible tax planning and what turns into impermissible tax avoidance may be somewhat thin, but that cannot be excuse enough for the tax authorities to err on the side of excessive caution Michael E Desa v. ITO [2021] 130 taxmann.com 314 (Mumbai - Trib.)

S. 148 New lease of life granted to erstwhile section 148 by issue of circular by CBDT

By effect of such notification, the individual identity of Section 148, which was prevailing prior to amendment and insertion of section 148A was insulated and saved uptill 30.06.2021. The pandemic and lock down prevailed all over India. The people could not file their return or comply with the various mandate of Income Tax Act. Considering such situation for the benefit of the assessee and to facilitate the individual to come out of woods the time limit framed under Income Tax Act was extended. Likewise certain right which was reserved in favour of the Income Tax Department was also preserved and was extended at parity. Consequently the provisions of Section 148 which was prevailing prior to the amendment of Finance Act, 2021 was also extended. Here in this case, the power to issue notice under Section 148 which was prior to the amendment was also saved and the time was extended Guruteg Bahadur Rice Mill A Partnership Firm v. ACIT [2021] 130 taxmann.com 154 (Chhattisgarh)

Direct Tax Vivad Se Vishwas Act – Disputed Tax

There is no provision in the DTVSV Act which authorises recovery of interest paid earlier by the Department under section 244A of the IT Act by adding the same to the amount of disputed tax in the manner sought to be done Cooperative Rabobank U A v. CIT [2021] 130 taxmann.com 10 (Bombay)