DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

S. 143B Faceless assessment and principles of natural justice

During the course of faceless assessment, show-cause notice, along with draft assessment order was served on assessee and assessee was asked to file its response within a one day. Considering the time constrains to comply with the notice within very short time assessee has requested for adjournment by a day. In absence of receipt of confirmation for adjournment assessee has filed the response and on same day final assessment order was passed. It was held that best course forward would be to set aside the impugned assessment order and Revenue to a fresh assessment order. It was also ordered that Revenue would issue fresh notice for personal hearing and also to consider response already filed - KBB Nuts (P.) Ltd. v NFAC [2021] 127 taxmann.com 194 (Delhi)

S. 23 Deduction of Society maintenance from rent received

The statutory provisions are quite clear and provide for deduction of only specified items i.e. taxes paid to local authority and the amount of rent which could not be realized by the assessee, from the expression 'actual rent received or receivable'. No other deduction is permissible. Allowing the other deduction would amount to distortion of the statutory provisions and such a view could not be countenanced. To accept the plea that rent which actually goes into the hands of the assessee is only to be considered, would enable the assessee to claim any expenditure from rent actually received or receivable since the same would ultimately reduce the amount which actually goes into the hands of the assessee. The same is not the intention of the legislatures. The statutory provisions, as noted earlier, provide for deduction of specified items only. Thus, society maintenance charges' as paid by the assessee, by no stretch of imagination, could be held to be taxes paid to local authority. Rockcastle Property (P.) Ltd. v. ITO [2021] 127 taxmann.com 381 (Mumbai - Trib.)

S. 28 Completed contract method and percentage complete method

The completed contract method and percentage complete method both were recognised method of accounting for computation of gains from construction contract. Section 43CB was inserted by the Finance Act, 2018 w.e.f. 1.4.2017 which provides that profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards. However, this section was not in existence and applicable in the assessment year 2014-15 which we are concerned with. Thus it is amply clear that percentage complete method and completed contract method were both acceptable method and accounting of construction contract in the impugned period. Furthermore, we find that this issue is revenue neutral. As and when the contract/project is complete, the gain would be exigible to tax. Thus the effect is only revenue neutral as revenue shall collect necessary taxation when the project is complete. Trident Estate (P.) Ltd. v. ITO [2021] 127 taxmann.com 360 (Mumbai - Trib.)

S. 37(1) Expenditure against income from income received by partner form partnership firm

Interest, salary, bonus, commission or remuneration received or receivable from the firm by the partners shall be assessable in the hands of the partners as income from business or profession under section 28 of the Act. The partner shall be entitled to all expenditure which is incurred to earn such income or for purposes of the said business. Other deductions as admissible in law can also be claimed by the partner against such income. It disagreed with the reasoning of the CIT(A) that the interest expense would be expenditure incurred for the purpose of earning income from the partnership firm in the form of share income and therefore the expenditure would be not allowable in terms of sec.14A of the Act. – Suresh Sreeram v. ITO [2021] 127 taxmann.com 249 (Bangalore - Trib.)

S. 45 Foreign currency gains arising out of refund of personal loans

Assessee had extended a personal interest free loan in foreign currency to his cousin. On refund of loan due to currency fluctuation assessee has earned foreign currency gains. It was held that such gains cannot be termed as interest. Where the loan is foreign currency denominated and the amount advanced as loan, as also received back as repayment, is exactly the same, there is no question of interest component at all. Its and capital gains. A capital gain, which is not taxable under the specific provisions of Section 45 or which is not specifically included in the definition of income, by way of a specific deeming fiction, is outside the ambit of taxable income. - Aditya Balkrishna Shroff v. ITO [2021] 127 taxmann.com 343 (Mumbai - Trib.)

S.45 Period of holding of capital assets

The rights or interests in a property are kinds of property that are transferable capital assets. Hence, booking rights or rights to purchase the apartment or rights to obtain title to the apartment are also capital assets that can be transferable. A contract for sale of flat was capable o f specific performance and was also and therefore , a right in an uncompleted building or a flat was clearly a property as contemplated by Section 2(14). The period of holding is to be reckoned from the date of first agreement while calculating capital gain on sale of such property. Shiv Kumar Jatia v. ITO [2021] 127 taxmann.com 179 (Delhi - Trib.)

S. 50C Similar tax treatment to be given in case of co-owners

The Revenue has not taken any action for reopening the case of co-owner and thereby accepted the similar STCG on same transaction, therefore, it was held that, the assessee cannot be treated indifferently for similar transaction. Hence, addition made by Assessing Officer in case of assessee by invoking provisions of section 50C for alleged Capital Gain on transfer of land was to be set aside. Rajeshkumar Shantilal Patel v. ITO [2021] 127 taxmann.com 342 (Surat-Trib.)

S. 80P(2)(d) Deduction is allowed on gross interest received

Co-operative society is eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank - Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. v. PCIT Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd.

S. 148 Issue of notice

'Issue of Notice' by the Competent Authority is contemplated under Section 149 of the Income Tax Act. However, 'Service of Notice' to the assessee has not been contemplated under the said provision. Thus, the 'time limit' prescribed for 'issue of notice' under Section 148 of the Income Tax Act, would not fall under the definition of 'service' under Section 27 of the General Clauses Act, 1897. Thus, Section 27 of the General Clauses Act, 1897 may not have relevance with reference to Sections 147, 148 and 149 of the Income Tax Act, 1961. The meaning of 'service by post' as defined under Section 27 of the General Clauses Act, 1897, may not have any applicability or relevancy as far as Section 149 of the Income Tax Act is concerned. Sadhna Tolasariya v. [2021] 127 taxmann.com 127 (Madras)