DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

1. Issue of Notice u/s. 143(2) to be reckoned with the date of filing the original Return of Income and not from the date of removing the defects u/s. 139(9) of the Act

Assessee filed its return of income under section 139(1) on 10-9-2016. Assessee was called upon to remove certain defects in the Return u/s. 139(9). The defects were removed and the Return was regularised on 7-7-2017 which was the time allowed by the Assessing Officer. Notice u/s. 143(2) was issued on 9-8-2018 which was challenged by the assessee as barred by limitation considering the date of filing the original Return of Income on 10-9-2016. The Gujarat High Court held that on removing of the defect the Return would relate back to the date of filing of the Original Return and accordingly the notice was time barred. [Ref : Kunal Structure (India) Pvt. Ltd. Vs. DCIT (2020) 113 taxmann.com 577 (Gujarat)]. SLP filed by department against the judgment of Gujarat High Court has been dismissed by the Supreme Court summarily

Dy. CIT Vs. Kunal Structure (India) Pvt. Ltd. (2021) 123 taxmann.com 392 (SC)

2. Period of limitation prescribed in section 254(2) would commence from date when affected party got knowledge of decision in question and not commence from date when order was passed

Appeals filed by the assessee before the Income-tax Appellate Tribunal for A.Y. 2002-03 to 2004-05 were dismissed by the Tribunal for non-attendance by an order dated 1-2-2013. The assessee was not aware of the order of the Tribunal dated 1-2-2013. On 19-11-2019 Tax Recovery Officer proceeded to attach immovable properties of assessee for tax recovery. On 30-12-2019 assessee filed an application before Tribunal to set aside its order dated 1-2-2013 and rehear appeal on merits along with an application for condonation of delay of 3052 days in seeking restoration of appeal. The Misc. Application filed were dismissed by the Tribunal as being time barred. On appeal to the High Court, it was held that Tribunal was not justified in dismissing appeal of assessee merely for absence of any representation on behalf of assessee and that the Tribunal has to dispose of an appeal on merits even if the assessee does not appear before the Tribunal at the time of hearing. It was further held that limitation prescribed u/s. 254(2) would begin to run from date when assessee got knowledge of order i.e. on 19-11-2019 and not from date of passing of order. Accordingly, the Miscellaneous Application filed by the assessee was not barred by limitation.

Daryapur Shetkari Sahakari Ginning and Pressing Factory Vs. Asst. Commissioner of Income-tax (2021) 123 taxmann.com 301 (Bom.)

3. On conversion of a company into LLP, the equity shares held in the erstwhile company are transferred within the meaning of section 2(47) and the computation provisions as laid down in section 48 would apply and would result in taxable capital gains in hands of shareholder.

Applicant was a UK company having a wholly owned Indian subsidiary Domino India. Out of total 40,80,000 equity shares issued by Domino India, 40,79,998 equity shares were held by Applicant and balance two equity shares were held by one Domino UK Limited in capacity of nominee of Applicant. Domino India had proposed to be converted into a Limited Liability Partnership (LLP) under LLP Act. On such conversion equity shares held by Applicant in the Indian company would be converted into partnership interest in the LLP. On Application made to AAR, it was held that such conversion of equity shares held by shareholder into partnership interest in the LLP, would be a transfer within meaning of section 2(47). It was further held that the computation provisions under section 48 would be workable and capable of being implemented for working out capital gains arising in hands of Applicant shareholder. Even if value of partner's interest in LLP is equal to value of shareholder's interest in company, it would give rise to taxable capital gain in hands of Applicant shareholder.

Domino Printing Science Plc., In re (2021) 124 taxmann.com187 (AAR – New Delhi)

4. Section 54EC of the Act – Amendment made by Finance Act 2015 restricting the exemption to aggregate Rs. 50 Lakhs is prospective in nature

The amendment made by the Finance Act, 2015 in section 54EC of the Income-tax Act, 1961 restricting investment in assets from sale consideration on sale of original asset to maximum Rs. 50 lakhs is prospective in nature. Accordingly, prior to assessment year 2015-16, it was possible for assessee to claim deduction of Rs. 1 crore by investing Rs. 50 lakhs in each of financial years but within six months

from date of transfer. In the case of the assessee, the assessment year was A.Y. 2009-10 and hence the amended provisions of section 54EC would not apply. In view of this proposed action u/s. 263 of the Act for revision of the order was held to be not valid.

CIT Vs. Smt. Neena Krishna Menon (2021) 123 taxmann.com 205 (Kar.)

5. Mere classification of land in revenue record, as agricultural land, will not conclusively prove that nature of land was an agricultural land. Where no evidence was produced by assessee to establish character of land sold by it as agricultural land, the land was held to be not an agricultural land

For Asst. Year 2008-09, assessee filed return claiming exemption in respect of profit arising on sale of agricultural land. Assessing Officer treated land as non-agricultural land and held that it was a capital asset u/s. 2(14) of the Act. The appeal preferred by the assessee was dismissed by the CIT (A). The Income-tax Appellate Tribunal reversed the order passed by CIT (A) for the only reason that lands were shown as agricultural lands in revenue record during relevant period and, therefore, would not fall within purview of definition of capital asset under the Act. However, it was found that nothing was brought on record by assessee to establish that agricultural operations were carried on prior to his purchase and after purchase of the land. The property was sold within a short period of one year to non-agriculturists who used it to develop SEZ. The High Court held that these relevant facts had not been taken note of by Tribunal while deciding character of land. Accordingly, the High Court held that the Tribunal erred in interfering with order passed by CIT (A).

CIT Vs. GRK Reddy & Sons (HUF) (2021) 123 taxmann.com 291 (Mad.)

6. Capital Gains from Penny Stock. Mere astounding increase in the share price of a company within which is not supported by the financials does not justify the conclusion that the Long Term Capital Gains earned by the assessee was bogus.

For assessment year 2015-16, the assessee had claimed exemption of Rs. 96,75,939/- u/s. 10(38) of the Act in respect of Long Term Capital Gains on sale of shares. The assessing officer held that the assessee had adopted a colourable device of showing bogus Long Term Capital Gains to avoid tax. He accordingly treated the said amount as unexplained cash credit u/s. 68 of the Act and levied tax as per the provisions of section 115BBE of the Act. The appeal filed before the CIT (A) was dismissed. The Tribunal allowed the appeal of the assessee for the reason that the entire assessment was made merely on the basis of the report of the Investigation Wing Kolkatta. The assessing officer has not made any independent inquiries with the parties. The statement recorded by the investigation wing had not been confirmed or corroborated during the assessment proceedings. Revenue filed an appeal to the High Court and contended that the aspect of human probabilities need to be looked into. Reliance was placed on the decision of the Delhi High Court in the case of Suman Poddar vs. ITO 423 ITR 480 and on the Supreme Court decision in the case of Sumati Dayal Vs. CIT. The High Court held that the primary reason for the addition is that there was an astounding 4849.2% in the share price within two years, which is not supported by the financials. The HC refused to accept the stand that the assessee converted unaccounted money into factitious exempt LTCG to evade tax. This finding of the assessing officer was unsupported by the material on record and a purely an assumption based on conjectures. The HC also held that the theory of human behaviour and preponderance of probabilities based on the decision of the Supreme Court in Sumati Dayal Vs. CIT 214 ITR 801 (SC), cannot be cited as a basis to turn a blind eye to the evidence on records. Both the decisions relied on by the department were distinguished on facts.

Pr. CIT Vs. Smt. Krishna Devi – ITA No. 125/2020 – Del HC (itatonline.org)

7. Indexed cost of property is to be reckoned from the date of allotment of property and not date on which possession certificate was issued.

Assessee declared capital gains from sale of property. During assessment, assessee submitted that date of allotment of property was on 20-5-1986, for which consideration was paid on 29-5-1986. Assessing Officer noted possession certificate was issued on 23-6-1998 and ultimately it was sold on 9-5-2012. Based on these dates Assessing Officer computed cost of inflation indexation to compute capital gains, and, accordingly, made addition. On appeal the order was confirmed by the CIT (A). On further appeal to the Tribunal, held that for computing cost of inflation of asset, date to be reckoned was date of allotment of property to assessee and not date on which possession certificate was issued to assessee.

L. Vivekananda Vs. Asst. CIT (2021) 124 taxmann.com 67 (Bangalore Trib.)

8. Where entire credit balance in accounts of assessee were outcome of purchases made during year and purchases had been accepted as genuine and no adverse inference had been drawn, lower authorities were not at all justified in making addition of balance outstanding

During the course of assessment for A.Y. 2004-05, the assessing officer asked the assessee to explain sundry creditors appearing in balance sheet as on 31-3-2004. The assessing officer observed that assessee had merely submitted names of parties along with addresses. However, notices issued on most of the addresses were not replied. The assessing officer added balance as on 31-3-2004. The appeal filed before the CIT (A) did not result any relief to the assessee. On appeal to the Tribunal, the Tribunal held that the action of the assessing officer was without appreciating the fact that entire credit balance in accounts were outcome of purchases made during the year. The purchases made by the assessee were not disputed and the assessee had in fact made the payments to the suppliers in the immediately succeeding years. Accordingly, the impugned additions were deleted by the Tribunal.

IKEA Trading (India) Pvt. Ltd. Vs. DCIT 123 taxmann.com 129 (Del. Trib.)