

## **DIRECT TAX – RECENT JUDGMENT**

**CA. Paras K. Savla, CA. Hemant R. Shah**

**S.80IA- Conversion of partnership firm into Company**

Partnership firm is converted into company. On such statutory vesting, all the properties of the firm, in law, vest in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company. A priori, it must follow that the business is carried on by the enterprise owned by a company registered in India and the agreement entered into between the erstwhile partnership firm and the State Government, by legal implication, assumes the character of an agreement between the company registered in India and the State Government for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility. Hence it was held requirement of S.80IA(i)(b) was fulfilled and company is entitled for the deduction – CIT v. Chetak Enterprises (P.) Ltd. [2020] 115 taxmann.com 108 (SC)

#### **S. 43B Unutilised MODVAT Credit does not qualify for deduction**

The MODVAT credit was accumulated to the account of the assessee due to payment of Excise Duty on raw materials and inputs which were supplied to it by the suppliers and reflected in the invoices by which raw materials and inputs were supplied. There is no denial to the fact that the appellant was entitled to utilise this credit in payment of Excise Duty to which the assessee was liable in payment of Excise Duty on manufacture of its products.

The credit of Excise Duty earned by the appellant under MODVAT scheme as per Central Excise Rules, 1944 is not sum payable by the assessee by way of tax, duty, cess. The scheme under Section 43B is to allow deduction when a sum is payable by assessee by way of tax, duty and cess and had been actually paid by him.

The deductions under Section 43B is allowable only when sum is actually paid by the assessee. In the present case, the Excise Duty leviable on appellant on manufacture of vehicles was already adjusted in the concerned assessment year from the credit of Excise Duty under the MODVAT scheme. The unutilised credit in the MODVAT scheme cannot be treated as sum actually paid by the appellant. The assessee when pays the cost of raw materials where the duty is embedded, it does not ipso facto mean that assessee is the one who is liable to pay Excise Duty on such raw material/inputs. It is merely the incident of Excise Duty that has shifted from the manufacturer to the purchaser and not the liability to the same.

Accordingly it was held that the unutilised credit under MODVAT scheme does not qualify for deductions under Section 43B of the Income Tax Act.

#### **S. 12AA(3) Non-compliant of section 2(15) will not automatically lead to cancellation of registration**

The view taken by the Director is concerned that institution is directly hit by the proviso to Section 2(15) of the Act and such satisfaction may lead to denial of exemption to the respondent in the assessment proceeding for the relevant assessment year but certainly cannot be a ground for cancellation of registration under section 12AA(3). The competent authority under section 12AA(3) must be satisfied that the activities of the Trust are not genuine or that the activities are not being carried out in accordance with the objects of the Trust or the Institution. Such satisfaction must be recorded as a matter of fact on the basis of specific materials on record. Merely saying that the activities of the respondent is hit by the proviso to section 2(15) of the Act, would not lead to automatic cancellation of registration as that is not a ground provided under section 12AA(3) of the Act for cancellation of registration. CIT(E) v. Mumbai Metropolitan Region Development Authority [2020] 115 taxmann.com 71 (Bombay)

#### **143(3) E-assessment**

The Government of India has introduced E-Governance for conduct of assessment proceedings electronically. It is a laudable steps taken by the Income-tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The assessee should have to be therefore at least called for an explanation in writing before proceeding to conclude that the amount collected by the assessee petitioner was unusual. The assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent Assessing Officer - Salem Sree Ramavilas Chit Company (P.) Ltd. V. DCIT [2020] 114 taxmann.com 492 (Madras)

#### **S. 220 Stay of demand**

Assessee application for grant stay of demand was rejected and Assessing Officer asked assessee to pay 20% of the disputed demanded amount on the basis of an Office Memorandum, dated 31.01.2017. Writ petition was filed against the said order. Stay was granted post payment of part demand - Suresh Anuradha v, CIT [2020] 115 taxmann.com 73 (Madras)

#### **Penalty can be levied for deliberate defiance of the law or wilful contravention of the law**

A careful and conjoint reading of the two provisions i.e. Sections 105 and 108 would therefore make it clear that imposition of penalty is to be proceeded separately as a separate proceeding. Merely because in the assessment order the Assessing Officer comes to a conclusion that the assessee had failed to collect the STT or had failed to pay such STT to the credit of the Central Government, it would not ipso-facto lead to imposition of penalty. Once such a conclusion is reached, the assessee is required to be provided reasonable opportunity of hearing and during the hearing if the assessee can prove that there was reasonable cause for such failure, no penalty shall be imposed.

The expression 'penalty' is a word of wide significance, but in substance penalty is in the nature of punishment. Therefore, before imposing penalty the Assessing Officer must come to the conclusion that there was deliberate defiance of the law or wilful contravention of the law by the assessee – PCIT v. National Stock Exchange [2020] 115 taxmann.com 302 (Bombay)

#### **S. 24 Deduction on interest where property commonly occupied and let to financially independent Son & Daughter**

It was observed that the arrangement is highly unusual, particularly considering that the rent is in respect of a self-owned property (i.e., for which no rent is being paid), which constituted the family's residence, with, further, the assessee's son and daughter being unmarried. That, however, to our mind, may not be conclusive of the matter. Being a private arrangement, not involving any third party, not informing the cooperative housing society may also not be of much consequence.

The assessee's major son and daughter are financially independent (or substantially so), with independent incomes, sharing the interest burden of their common residence with their father. And, as such, instead of transfer of funds to him per se, have regarded, by mutual agreements, the same as rent, as that would, apart from meeting the interest burden to that extent, also allow tax saving to the assessee-father. A genuine arrangement cannot be disregarded as the same results or operates to minimize the assessee's tax liability.

It was held that the assessee's interest claim cannot be allowed in full and shall have to be suitable proportioned between the self-occupied and rented property. The assessee shall provide a reasonable basis for such allocation as well as the working of the area let. We say so as it may well, in view of the joint residence, be that no area (portion) is specified in the rent agreements. The number of family members living jointly; their living requirements - which may not be uniform; fair rental value of the property, etc., are some of the parameters which could be considered for the purpose - Md. Hussain Habib Pathan v. ACIT [2020] 115 taxmann.com 179 (Mumbai - Trib.)