DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

1. Section 69A - Meaning of Owner and Valuable Article

The assessee carried on business as carriage contractor for bitumen. Assessee was involved in scam of misappropriating the bitumen and not delivering the quantity lifted to various divisions of the Road Construction Department of the Government of Bihar. The assessing officer made an addition in respect of the value of the bitumen in the hands of the assessee under section 69A of the Act. This was confirmed by the High Court.

On appeal to Supreme Court, the Supreme Court held that the assessee was not the owner of the bitumen. The Supreme Court held that when a common carrier refuses to deliver the consignment and continues to possess it contrary to contract and law and converts it into his use or sells the same, he would be considered as a thief and a thief cannot be owner within the meaning of section 69A. The Supreme Court also held that the term 'valuable article' under section 69A means only such precious and aspirational articles like bullion & jewellery which are capable of being repositories of hidden earnings, not commonplace stuff like bitumen. The Supreme Court held that the addition u/s. 69A is not justified.

D. N. Singh v. CIT [2023] 150 taxmann.com 301 (SC)

2. Sec. 28(i) – Sale of Development Rights in property showed as inventory – Head under which taxable

The assessee company was engaged in the business of builders and developers. The company had entered into agreement for sale of development rights in a property which was held as stock in trade. During the assessment proceedings, revenue observed that amount of Rs. 15.94 crores, received for sale of development rights was not disclosed in return. The assessing officer treated the same as short term capital gains and made addition accordingly, which was confirmed by Commissioner (Appeals). The Tribunal after examining opening and closing balance for assessment years 1996-97 to 2007-08, observed that assessee in multiple years showed it as inventory and claimed expenses and was engaged in business of building and development, thus, transfer of development right was for land that formed part of its inventory. The Tribunal also accepted assessee's contention that in terms of rectification deed, consideration was reduced to Rs.5.24 crore, as against original amount of 15.94 crore, which was offered to tax in subsequent year and thus deleted addition. The High Court dismissed revenue's appeal observing that Tribunal rightly concluded that impugned transaction related to assessee's business and was assessable as business income.

On appeal before Supreme Court, the Supreme Court held that it appeared that Tribunal had neither dealt with findings given by Assessing Officer nor verified/examined total sales made by assessee during previous years. Tribunal had also not considered factors like frequency of trade and volume of trade, nature of transaction over years etc., that were required to be examined to decide if a particular transaction was sale of capital assets or business expense. Further High Court failed to appreciate that even in event of acceptance of assessee's claim that Rs. 5.24 crore was offered to tax in assessment year 2008-09, balance amount Rs. 10.69 crores(i.e. Rs. 15.94 crores - Rs. 5.24 crores) on account of reduction in sale consideration of development rights should have been assessed in current year as either capital gain or business income. Tribunal had also not questioned factum of refund of differential amount of Rs.10.69 crores to purchaser on account of rectification deed. Therefore, Tribunal not having considered relevant aspects/relevant factors while considering transaction in question as stock in trade, matter was to be remanded back to Tribunal for consideration afresh.

CIT v. Glowshine Builders & Developers Pvt. Ltd. [2023] 150 taxmann.com 111 (SC)

3. Educational Institution having profit motive – Sec. 10(23C) – Exemption not available

The assessee was an educational institution. The Commissioner, while considering the application of assessee for grant of exemption u/s. 10(23C)(vi) specifically observed that the activity of assessee could not be said to be solely for imparting education and that assessee was indulging into profit which was found be 67.8% without depreciation and 44.48% with depreciation. The High Court set-a-side the order of the Commissioner.

On revenue's appeal the Supreme Court held that the specific finding of fact as observed by the Commissioner had not been upset by the High Court. Considering this, the Supreme Court held that the order passed by the High Court setting aside the order of the Commissioner was to be quashed.

Union of India v. Baba Banda Singh Bahadur Education Trust [2023] 150 taxmann.com 40 (SC)

4. Issue of Notice on a dead person – Sec. 148 r.w.s. 292BB – Not a valid notice

The reassessment notice u/s. 148 of the Act was issued on a dead person. On a writ petition challenging the notice, the High Court held that the notice issued to a dead person is null and void in law and that the requirement of issuing the notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law. Therefore, notice and all consequential proceedings in name of a deceased assessee were null and void and consequently the notices issued u/s. 148 and also notice issued u/s. 148A(b) and order under section 148A(d) were to be quashed.

Dhirendra Bhupendra Sanghvi v. Asst. CIT [2023] 151 taxmann.com 541 (Bombay).

5. Validity of reassessment - Explanation – 1 to section 37(1) – penalty imposed for breach of a civil obligation would be outside purview of the Explanation – Reassessment not justified for making such disallowance

The assessee company was engaged in business of providing IT and IT enable services. It provided on-site services to its clients in US for which employees were deputed as per deputation agreement entered into between assessee and concerned employees. Certain employees raised certain disputes against assessee before US District Court wherein damages were claimed. Pursuant to said civil suit, settlement agreement was arrived at and assessee paid settlement amount to concerned employees. During original assessment, the Assessing Officer after considering submissions of assessee accepted return and passed assessment order. Thereafter, Assessing Officer issued reopening notice after receiving information from Investigation Wing that assessee had paid penalty in USA and same was claimed as allowable expense instead of penalty. It was noted from settlement agreement that what was agreed to be paid was on account of a pure settlement between parties wherein settlement was arrived at for purposes of avoiding expense, risk and uncertainty. Also order passed by US Court recording approval to said agreement did not refer to amount payable in any manner as a penalty amount.

On petition to the High Court, the High Court held that since claim of assessee was allowed by Assessing Officer in regular assessment under section 143(3) and other than information from Investigation Wing there was no material available on record to prove that payment made was penalty, reopening would not be justified.

Tata Consultancy Services Ltd. v. Dy. CIT [2023] 152 taxmann.com 3 (Bombay)

6. Reassessment u/s. 147 – Issue of notice to a non-existing company – Not valid

The assessee company got amalgamated with one parent company and same was approved by High Court on 28-6-2016. Subsequently, assessee intimated about same to Assessing Officer - However, reopening notice was issued in name of erstwhile company. On petition to the High Court, challenging the validity of the reassessment, it was noted that in case similar to assessee High Court held that issuance of notice under section 148 in name of non-existing company which was amalgamated with assessee-company and lost its existence was without jurisdiction and same was to be quashed. Following aforesaid view reopening notice issued in name of erstwhile company was held to be quashed.

Adani Estate Management (P.) Ltd. v. ITO [2023] 151 taxmann.com 387 (Gujarat)

7. Section 179 of the Act – Liability of Directors of a private company

The Petitioner was director in a private limited company which was incorporated as a JV alongwith one KFI. A show cause notice was served on petitioner with respect to outstanding demand against the private limited company. Petitioner claimed that during time when he was director there was no outstanding demand of tax. The assessing officer passed order under section 179 holding that petitioner as director of the company was jointly and severally liable for outstanding taxes dues. The petitioner challenged the same before the High Court.

It was noted that petitioner submitted all documents in support of his claim that he was not in controlling capacity of company specially its financial affairs. Perusal of documents produced on record showed that after petitioner's removal from directorship which took place in year 2009 itself petitioner had no connection with said company or any access to its affairs. Since submissions showed lack of financial control, lack of decision making power and having very limited role in assessee company even as director and that entire decision making process was with directors appointed by KFI (being single largest share-holder of the company), the petitioner

had sufficiently discharged burden cast upon him in terms of section 179(1) and absolved him from liability. Thus, impugned order holding petitioner liable for outstanding dues of the company was to be quashed.

Prakash B. Kamat v. Pr. CIT [2023] 151 taxmann.com 344 (Bom.)

8. Section 199 – Credit of TDS Deducted u/s. 194-IA in the name of Karta of HUF by the buyer of the property

The assessee HUF had filed return and shown Long Term Capital Gains from sale of immovable property and was said to have invested a certain sum in capital gain account and balance in NHA bonds. The buyer of the property had deducted u/s. 194-IA of the Act. The TDS had been deducted in the hands of the karta of HUF for the reason that he was registered owner of properties. The assessing officer passed assessment order denying the TDS credit u/s. 194-IA since the credit was reflected in the individual name.

On appeal to the Tribunal, the assessee submitted that sale of property belonging to HUF was shown in books of HUF and capital gains on said sale was offered to tax in hands of HUF. The TDS deduction was reflected in 26AS of the individual as buyer deducted tax in his name for reason that he was registered owner of properties. The assessee had also filed an affidavit of the karta along with PAN number to substantiate that TDS was not claimed in the individual return of income. The Tribunal held that since the assessing officer had charged capital gains in hands of assessee HUF, the assessing officer cannot deny credit of TDS in name of the HUF when corresponding capital gain on said transaction was taxed in assessee HUF's name.

Anant Singhania HUF v. ITO 151 taxmann.com 389 (Mumbai Trib.)

9. Section 56(2)(viib) – Share Premium – Allotment of shares between holding and subsidiary company – Section 263 of the Act – Revision of the order – Not justified.

During the scrutiny assessment order was framed under section 143(3) wherein income of assessee returned at Rs. Nil was accepted by the Assessing Officer without any modifications. - Pr. Commissioner alleged that failure of Assessing Officer to examine genuineness of transaction, creditworthiness of persons from whom share premium had been received had rendered, assessment erroneous and prejudicial to interest of revenue. The transaction of allotment of shares at a premium in instant case was between holding company and it is subsidiary company. The CIT invoked the powers u/s. 263 of the Act. The revision order of the CIT was challenged before the Tribunal.

The Tribunal observed that when seen holistically, there was no benefit derived by assessee by issue of shares at certain premium notwithstanding that share premium exceeded fair market value. Instinctively, it was a transaction between self, if so to say. Further, fair market value was supported by independent valuer report, allotment had been made to existing shareholder holding 100 per cent equity and therefore, there was no change in interest or control over money by such issuance of shares. The object of deeming an unjustified premium charged on issue of share as taxable income under section 56(2)(viib) is wholly inapplicable for transactions between holding and its subsidiary company where no income could be said to accrue to ultimate beneficiary, i.e., holding company. In this backdrop, extent of inquiry on purported credibility of premium charged did not really matter as no prejudice could possibly result from outcome of such inquiry. Therefore, revisional action of Pr. Commissioner in context of facts of case and without meeting jurisdictional requirement of section 263 was wholly unjustified.

BLP Vayu (Project – 1) (P.) Ltd. v. Pr. CIT [2023] 151 taxmann.com 47 (Delhi Trib.)