

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Narayan Atal

S. 11(1)(c) – Deduction in respect of approved donation to foreign university

Trust is entitled to claim deduction u/s 11(1)(c) in respect to donation made to the foreign university on the basis of specific approval from CBDT. Once specific approval is granted by CBDT, it is not open to the CIT(A) to review the decision of CBDT. It was observed by the ITAT “the CBDT has approved the exemption being granted in respect of payments made by the assessee trust to the Cornell University USA and Harvard University USA, in which the Assessing Officer has duly given effect to the stand so taken by the CBDT, and yet a hyper-pedantic, even if a bonafide, approach of the learned CIT(A), seemingly more loyal to the CBDT than CBDT itself, has resulted in this wholly avoidable litigation which does not only clog the serious litigation before the judicial forums but also diverts scarce resources of the philanthropic bodies, like the assessee before us, to the areas which do no good to the society at large. It appears that the view taken in the matter by the CIT(A) in reviving an issue which was already concluded by the Assessing Officer in favour of the assessee, and in the Assessing Officer defending the action of the CIT(A), is inherently incompatible with much appreciated and very forward looking approach of the Government of India towards minimising litigation and thus creating a taxpayer friendly environment. We hope that the admirable work being done by the Government of India, in pursuing such forward looking policies at the macro level, is not allowed to be overshadowed by the isolated situations like this, at the field level, which must be minimized by sensitising the authorities concerned. An effort should be made to create a taxpayer friendly atmosphere by adopting just and fair approach at every level of the tax administration.” - *Tata Education and Development Trust v. ACIT* [2020] 117 taxmann.com 946 (Mumbai - Trib.)

S.28(i), 36(1)(iii) Commencement of business and deduction of expenditure

On facts it was observed that substantial activities were carried out by the assessee, since the date of incorporation which had culminated in raising loans, making investment in purchase of land, which was reflected as stock in trade and also advancing loans to associate concerns for purchasing different pieces of land, in order to fulfil the condition of Land Bank of 100 Acres or more, to develop the township in Haryana and where the assessee is entered into development agreement at the close of the present year/beginning of the next year, then assessee can be said to have set up and commenced its business. Further, the assessee having also invested substantial amount in the purchase of another property in the year itself, thus, set up of its business as per its Memorandum of Understanding was done, since it was engaged in the business of real estate. It is held that there is no merit in the order of the authorities below in this regard and the same are reversed. Accordingly, we hold that the assessee having not only set up its business but had also commenced its business during the previous year itself.

Once the business had been set up and also commenced in instant year itself, then the interest expenses claimed by the assessee and any other expenditure claimed by the assessee is to be allowed as business expenditure. The assessee had also parked certain funds temporarily in the bank FDRs, on which it had earned interest which is to include also as business income in the hands of the assessee. Further the said interest income needs to be set up of against interest expenditure as funds have been borrowed by the assessee and only surplus borrowed funds have been invested in bank FDRs - *Jindal Realty (P.) Ltd. v. ACIT* [2020] 117 taxmann.com 419 (Delhi - Trib.)

50B(2) – Slump Sale

Separate undertaking is one which can be separated from the business unit and both the business units of the assessee should be run separately, independent of each and they should not be dependent on each other. The wind mills constitute separate undertaking, since as per the Profit & Loss account, the assessee is computing profits separately, from wind mills and in a position to ascertain the income and expenditure separately for the windmills as well as for the assessee’s business. Sale of windmill business was held to be slump sales under capital gains – *ACIT v. Devi Sea Foods Ltd.* [2020] 117 taxmann.com 440 (Visakhapatnam - Trib.)

S. 56(2)(viib) r.w.r. 11UA(2)(b) - ITO was directed to carry fresh valuation on the basis of following

(i) the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. (ii) For scrutinizing the valuation report, the facts and data available on the date of valuation

only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections. The primary onus to prove the correctness of the valuation Report is on the assessee as he has special knowledge and he is privy to the facts of the company and only he has opted for this method. Hence, he has to satisfy about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method, Scientific study and applicable Guidelines regarding DCF Method of Valuation - Flutura Business Solutions (P.) Ltd. v. ITO [2020] 117 taxmann.com 567 (Bangalore - Trib.)

S. 69 Deposit in foreign bank account

The assessee is not a public personality like Mother Teresa that some unknown person, with complete anonymity, will settle a trust to give her US \$ 4 million, and in any case, Cayman Islands is not known for philanthropists operating from there; if Cayman Islands is known for anything relevant, it is known for an atmosphere conducive to hiding unaccounted wealth and money laundering, and that does not advance the case of the assessee. Hon'ble ITAT has held that addition justified when assessee beneficial owner of deposits in foreign bank accounts has declined to sign consent waiver so as to enable Income-tax Department to obtain all necessary details from said account - Renu T Tharani v DCIT [2020] 117 taxmann.com 804 (Mumbai - Trib.)

S. 148 – Reasons for re-opening should be ad verbatim provided to tax payer

In all circumstances the assessing officer is supposed to provide the complete reasons recorded for reopening of the assessment to facilitate the assessee to defend itself against the reopening of the assessment. To keep few arrows in its quiver and only disclosing few arrows out of that is not expected from a revenue officer. It also against the fair play rule of reassessment proceedings. It was also observed that it is not denied that in context and in substance they are same but there should be same ad verbatim - Wimco Seedlings Ltd. v. JCIT [2020] 117 taxmann.com 425 (Delhi - Trib.)

S. 154 – Dismissal of rectification application

The assessee's rectification application was dismissed in a most sketchy and mechanical manner without affording an opportunity of hearing to assessee. In such a situation, assessee was not to be relegated to avail alternative remedy of filing appeal. The impugned order was to be set aside and matter was to be remanded back for disposal afresh in accordance with the provisions of law - Ernakulam District Posts Telecom and Bsnl Employees Co-operative Society Ltd. v. ITO [2020] 117 taxmann.com 623 (Kerala)

206C TCS provision applicable on resale of scrap

The scrap sold by the railway was certainly not usable due to its breakage or wear and tear and it was also subjected to TCS for which the assessee has not raised any objection. Once the assessee has accepted the goods purchased from the railway as scrap and allowed the TCS then the resale of the same goods by the assessee will not part take a different character and subject to TCS - Pramod Kumar Jain v. ITO [2020] 117 taxmann.com 649 (Jaipur - Trib.)

S. 241A, 245 Power to withheld refund

Admitted refund amount cannot be retained on ground that department may have a future demand against assessee arising out of pending assessment orders. Section 241A granting power to Assessing Officer to withhold refund applies for assessment years after 1-4-2017 and not for earlier assessment years and that too is subject to the previous approval of the Principal Commissioner or Commissioner, as the case may be - Vodafone Idea Limited v. ACIT [2020] 117 taxmann.com 597 (Bombay)

Note: Revenue SLP before Supreme Court against said order is dismissed [2020] 117 taxmann.com 879 (SC)