VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

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Inside this edition

Where an order u/s 142(2A) approving special audit was not communicated to appellant, appeal disposed of with a direction that purported order directing special audit will not be given effect to and will be treated as not passed'

Facts

The appellant, Rajiv Gandhi Proudyogiki Vishwavidyalaya, is a university set up by the State of Madhya Pradesh, filed the present appeal taking exception to the order dated 11-11-21 passed by the HC of Madhya Pradesh at Jabalpur, whereby the Writ Petition No. 22483/2021 filed by them challenging the notice issued by the chartered accountant for undertaking special audit for the AY 2018-19 u/s 142(2A) has been rejected. In the present case of the appellant that they were never served with any order u/s 142(2A). This fact, however, was overlooked by the High Court on the ground that the order need not be passed, and only hearing is required.

Rulings

During the course of hearing before us, the learned Additional Solicitor General accepts that the order u/s 142(2A) was never communicated or even uploaded on the portal. He, however, submits that the written order was placed in the order sheet file.

Be that as it may, the order is required to be communicated to the appellant, so as to know the reasons, and, if required, the appellant can choose to exercise the option to challenge the order which is fundamental. However, it is stated before us that assessment order has not been passed and has become barred by time. There is ambiguity whether the special audit has been filed before the AO. In the aforesaid factual background, SC disposed of the present appeal with a direction that the purported order dated 19-4-21, directing special audit u/s 142(2A) will not be given effect to and will be treated as not passed, as t was never communicated to the appellant. Further, with the consent of the learned counsel for the appellant, SC extended the time for passing the assessment order till 31-12-23. If the AO desires special audit u/s 142(2A), he can either rely upon the earlier notice or issue a fresh notice. In case the AO relies upon the earlier notice, it will be so indicated and communicated to the appellant. In either case, hearing as per law will be given. Thereafter an order u/s 142(2A) if passed, will be communicated to the appellant, who will be at liberty to challenge the order in accordance with law. If any special audit is directed or ordered to be conducted, the date 31-12-23 will get extended as per the provisions of the Act. The appeal was therefore allowed and disposed of in the above terms, with no order as to costs.

Source: SC in Rajiv Gandhi Proudyogiki Vishwavidyalaya vs Union of India vide [2023] 146 taxmann.com 353 (SC) on January 13, 2023

A person other than searched persons is liable to pay interest u/s 158BFA(1) on late filing of return u/s 158BC even in absence of a notice u/s 158BC

Facts

That the appellant is an individual and Director Partner in Khoday Group of Company concerns. A search u/s 132 was conducted in the residential premises of the family members of Khoday Group and the warrant was issued in the name of M/s. Khoday India Limited. The appellant was served with the notice u/s 158BD to file the return of income for the block period of 01-04-86 to 13-02-97. The appellant filed return for the block period in response to notice by including the undisclosed income of INR 45 lacs. The AO levied interest /s 158BFA(1) for the period from 18-01-98 to 19-01-99 at the rate of 2% per month for 13 months (i.e. INR 7.12 lacs). The appellant being aggrieved by the order of the AO filed an appeal before the learned CIT (A) who held that Section 158BFA provides for levy of interest for late filing of return of block assessment in response to the notice u/s 158BC similar to the provisions of Section 234A. The CIT(A) also held that levy of interest u/s 234A is compensatory in nature and is attracted the moment there is a default. The appellant being aggrieved by the order of CIT(A) filed an appeal before the ITAT, Bangalore. Before ITAT, it was contended on behalf of appellant that provisions of Section 158BFA(1), the levy of interest would be attracted only in a case where there was a failure or delay in filing the return in response to notice u/s 158BC. It was contended that in absence of any notice, the AO was not justified in levying interest. The learned ITAT allowed the appeal preferred by the appellant by observing that Section 158BFA(1) prescribes levy of interest and never require to pay the self-assessment tax due along with the return. The revenue being aggrieved by the order passed by the ITAT, filed an appeal before the High Court who reversed the decision of the TAT observing that the amendment to Section 140A is of no consequence so far as determination of interest u/s 158BFA(1) is concerned. The High Court negatived the submission on behalf of the appellant that in absence of any specific notice u/s 158BC, there shall not be any levy of interest u/s 158BFA(1) on the submission that prior to the amendment by including Section 158BC within the scope of Section 158BD by Finance Act, 2002 w.e.f. 01-06-02. The High Court has observed and held that levy of provisions of Section 158BD prior to the amendment in terms of Finance Act, 2002 i.e. before adding the words “u/s 158BC”, section itself indicates the procedure that was required to be followed by the AO, is only in terms of the very provisions of Chapter XIVB and therefore Section 158BC as well as 158BFA(1) are even otherwise attracted and just because the Legislature thought it fit to add or to mention Section 158BC by way of amendment through Finance Act, 2002, it would not make any

difference to the earlier provision of Section 158BD which even otherwise envisages within itself the provisions and applicability of Section 158BD and 158BFA(1). Consequently, the High Court has answered the questions of law in favor of the revenue and against the appellant and consequently allowed the said appeal.

Ruling

SC observed and held that the respective appellants are not liable to pay the surcharge under proviso to Section 113 and the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent. For liability to pay the interest u/s 158BFA, SC held that it can be seen that by inserting the words “u/s 158BC” in Section 158BD, the Parliament intended to clarify that the assessment for the block period in case of the persons other than searched persons would also be as per the procedure u/s 158BC. At this stage, it is required to be noted that in the present case as such M/s. Khoday India Limited, and M/s. Khoday Breweries Limited – the persons searched were issued notice u/s 158BC and in case of K.L. Swamy, who is the “other person”, the notice u/s 158BD has been issued. So far as the liability to pay the interest u/s 158BFA for late filing of the return u/s 158BC, in absence of any notice u/s 158BC upon the appellant other than searched persons, the said question is held in favour of the revenue and against the appellant. The impugned judgment and order passed by the High Court is hereby confirmed and it is observed and held that the appellant other than searched persons shall be liable to pay the interest on late filing of the return u/s 158BC even in absence of a notice under Section 158BC.

Source: SC in K.L. Swamy vs CIT & Anr. vide Civil Appeal No. 3704 of 2012 on January 13, 2023

Trust running newspaper is not entitled to exemption u/s 11 if ad receipts exceed quantitative threshold imposed by proviso to Section 2(15)

Facts

The appellant society was founded in the year 1921 by the legendary freedom fighter Lala Lajpat Rai during the freedom struggle for the nation building, general awareness and welfare of the people. In 1928, the famous freedom fighter of Odhisha Shri Pt. Gopa Bandhu Dass made a Will of his property and his printing press which is managing the Oriya newspaper "Samaj"- for people's welfare. The appellant was enjoying exemption u/s 11 but the same was denied during the AY 1973-74 and later allowed by the ITAT and affirmed by the High Court. The appellant was also earlier allowed exemption for three years i.e. 1990-91 to 1992-93 u/s 10(23C)(iv). The appellant was undergoing these activities:

- Established and is running schools in the name of Balwant Rai Mehta Vidya Bhawan in Lajpat Nagar and in Greater Kailash in New Delhi,
- Established one Medical Centre in Lajpat Nagar and old age home in Dwarka in Delhi; and
- Building a hospital in the name of Gopa Bandhu Medical Research Centre in Odisha.

The appellant was also allowed exemption u/s 11(1) but the same has been denied during the AY 2010-11 and 2011-12 by invoking the proviso to Section 2(15) on the ground that the appellant is involved in trade, commerce or business as it manages and runs a printing press and a newspaper. The appellant argued that it was primarily a non-profit institution involved in charitable activities and did not engage in any trade, commerce or business or any such activity. The appellant approached the Appellate Commissioner who allowed its plea and directed that the income earned by it ought to enjoy the benefit of exemption. The revenue carried the matter in appeal to the ITAT and the High Court, both unsuccessfully. As a consequence, it has approached this Court in appeal by the special leave.

Ruling

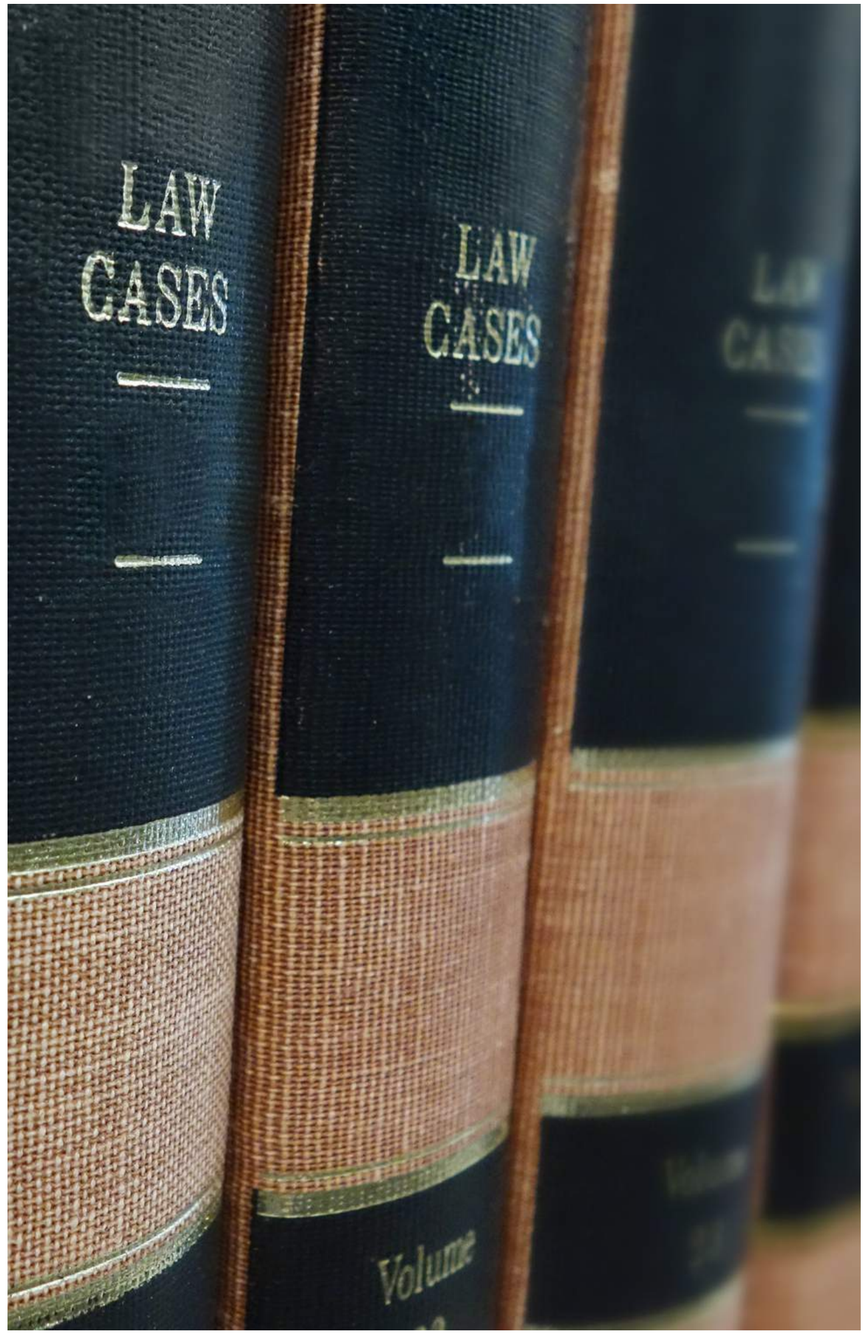
SC held that in the present case, the Appellate Commissioner, the ITAT and the High Court merely followed the judgment of the Delhi High Court in India Trade Promotion Organisation. However, the law with regard to interpretation of Section 2 (15) has undergone a change, due to the decision in Ahmedabad Urban Development Authority. As a result, SC opined that the matter should be remitted for fresh consideration of the nature of receipts in the hands of the appellant and as a result of which, the matter requires to be re-examined, and the question as to whether the amounts received by the appellant qualify for exemption, u/s 2(15) or Section 11 needs to be gone into afresh. In view of the foregoing discussion, the revenue's appeal succeeded in part. SC stated that the AO shall examine the documents and relevant papers and render fresh findings on the issue whether respondent is a charitable trust, entitled to exemption of its income and shall complete the hearing and pass orders within four months. The appeal was therefore allowed to the above extent.

Source: SC in PCIT vs Servants of People Society vide Civil Appeal No. 614 of 2023 on January 31, 2023

Reassessment notice u/s 148 (pre-amended) quashed based on mere change of opinion that too after the limitation period of 4 years

Facts

The appellant is a company engaged in the business of manufacturing and trading of yarn and fabric. For AY 2012-13, the appellant filed return of income declaring total income of INR 1.58 crore after claiming deduction of INR 7.63 lacs in respect of key man insurance premium. The company Shahlon Industries Pvt. Ltd merged with the appellant herein i.e. Shahlon Silk Industries Pvt. Ltd vide passed by this Court. Case of the appellant was selected for scrutiny assessment and various details were called for by the AO. The AO issued show cause notice calling upon the appellant to show cause as to why disallowance u/s 14A should not be made to which the appellant replied with justifications. However, disallowance was made u/s 14A while framing assessment u/s 143(3). The respondent thereafter issued the impugned notice u/s 148 in the name of appellant i.e. Shahlon Industries Pvt. Ltd. seeking to reopen the case. The appellant submitted reply and stated that the company has already merged with the appellant and is no longer in existence, hence, appellant company cannot file return of income electronically. The respondent vide order disposed of the objections raised by the appellant. Being aggrieved by the action of the respondent, the appellant has preferred this petition. Learned Senior Advocate for the appellant submitted that before passing of the impugned order, the appellant company was amalgamated with M/s. Shahlon Silk Industries Private Ltd vide order of this Court. It was submitted that though the amalgamation was sanctioned on 27-08-14, the assessment order u/s 143(3) dated 16-03-15 and penalty order dated 24-09-15 was passed in the old name of the company i.e. M/s. Shahlon Industries Pvt. Ltd which is the amalgamating company. The ld. Counsel also submitted that that it is well settled that no notice can be issued in the name of non-existent entity and therefore, the impugned notice issued in the name of a non-existent entity is non-est.



Ruling

HC stated that insofar as disallowance u/s 14A, the case of the respondent is that there was an error in computation of the average value of investments, as adopted at the original assessment stage, whereby certain investments yielding exempt income were not considered. From the record, it appears that investments and assets were shown in the balance sheet and specific notice was issued with respect to disallowance u/s 14A. The appellant gave complete details and explanation as to why disallowance u/s 14A is unwarranted and in fact, the AO made addition u/s 14A while framing the assessment Thus, the AO after threadbare examining the various issues including issues as to Keyman insurance premium and disallowance u/s 14A, took a view not to make any disallowance in respect of Keyman insurance premium while framing assessment u/s 143(3) and made disallowance u/s 14A. It is therefore, apparent that there is change of opinion by the AO to reopen the assessment for the AY 2013-14, more particularly, when the issues raised in the reopening assessment were already considered during the assessment proceedings u/s 143(3). The AO cannot have any jurisdiction to issue the notice u/s 148 for reopening the assessment for the year under consideration more particularly, when the assessment is sought to be reopened beyond a period of four years. In view of foregoing reasons and considering the facts of the case impugned notice u/s 148 is not tenable in law and is accordingly quashed and set aside and consequential order disposing of the objections raised by the appellant is also quashed and set aside.

Source: High Court, Gujarat in Shahlon Silk vs ACIT vide Special Civil Appeal No. 20436 of 2018 on January 06, 2023

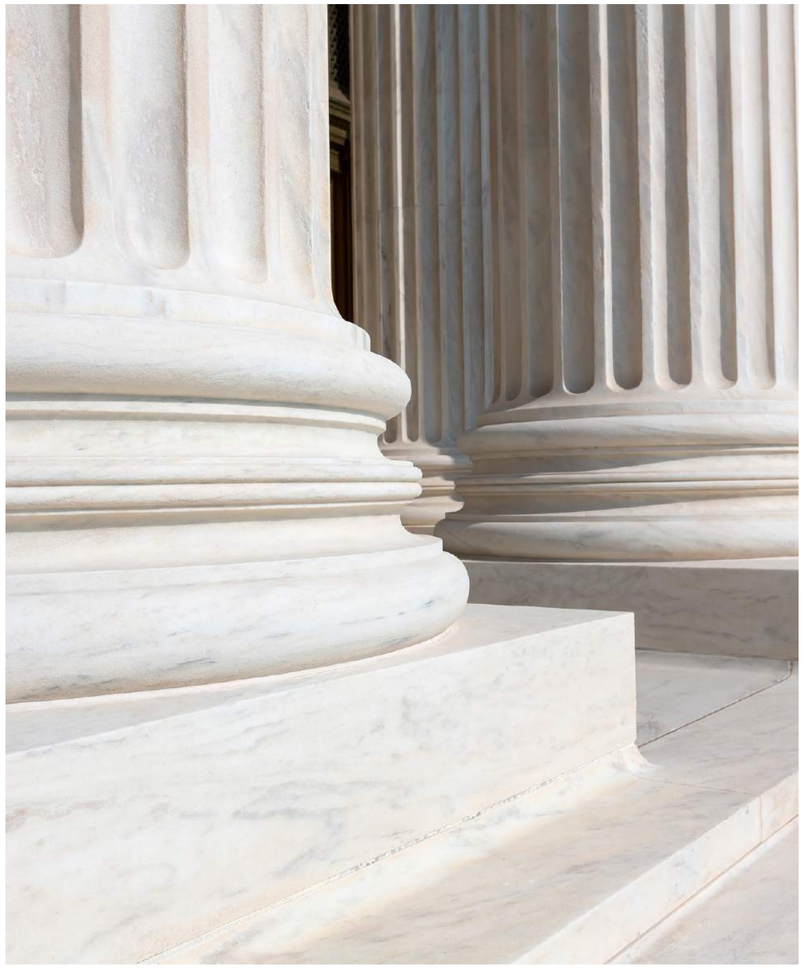
Where appellant had submitted various details including details of shares purchased; entities from whom shares were purchased etc., and AO had applied its mind to said information and framed assessment, Tribunal was not right in holding that no enquiry was made by AO during original assessment proceedings

Facts

The appellant had acquired 7,70,000 shares of an unlisted company (Indian Steel and Power Pvt. Ltd.) at the rate of INR 10 per share. The Ld. Commissioner was of the view that the provisions of Section 56(2)(vii)(a) would be applicable and the appellant would be liable to pay tax on the difference between the consideration paid for the said shares and their FMV. The Ld. Commissioner also stated that the fair market value of the share of Indian Steel and Power Pvt. Ltd, computed in accordance with Rule 11U was INR 10.83 each, which was 8.3% higher than that the consideration paid by the appellant. According to the Commissioner, the valuation of the Chartered Accountant was erroneous as he had not included the value of the Minimum Alternative Tax (MAT) credit entitlement. The Commissioner thereafter concluded that the AO had not conducted any enquiry and therefore, the assessment order is erroneous and prejudicial to the Revenue in terms of Explanation (2) to Section 263(1).

The MAT credit entitlement is not a marketable asset, and the question whether such entitlement should be included while computing the fair market value of shares of a company is debatable. Ld. ITAT found that the Commissioner was not justified in assuming jurisdiction on the ground that no enquiries had been conducted by the AO. The AO had issued queries regarding investment in unlisted equity shares. The appellant had responded to the questionnaire and submitted various details including the details of the shares purchased; the entities from whom the shares were purchased; copies of the bank accounts evidencing payments of consideration; and, the computation of the book value of the shares amongst other details. The AO had applied its mind to the said information and had framed the assessment.

The learned ITAT rightly held that this is not a case that no enquiry has been conducted by the AO. Accordingly, the learned ITAT set aside the order dated 31-3-21, passed by the learned Commissioner.



Ruling

HC held that it is apparent form the above that the tax effect is in the vicinity of INR 2.20 lacs, which is less than the threshold of INR 1 crore for filing an appeal in the High Court. The learned counsel for the appellant submits that since the Commissioner had set aside the assessment order with a direction to the appellant to make afresh assessment, the tax effect could not be ascertained and the appeal was not covered under the Board Circulars issued in this regard. The said contention is unpersuasive. The orders passed u/s 263 are not excluded from the purview of the circular issued by the CBDT fixing the monetary limits for filing appeals. In the present case, although the Commissioner had remanded the matter to the AO, he had also broadly quantified the income, which, according to the Commissioner, had been underassessed. A meaningful reading of the order passed by the Commissioner u/s 263 clearly indicates that the net tax effect of setting aside the said order is far below the monetary limit specified by the CBDT. In view of the aforesaid, HC dismissed the present appeal on the ground that it is belated; the tax effect is below the monetary limit; and no substantial question of law arises in the present appeal.

Source: High Court, Delhi in PCIT vs Pushp Steel & Mining (P.) Ltd. vide [2023] 146 taxmann.com 478 (Delhi) on January 17, 2023

No TDS on salary/commission paid to partners; No disallowance u/s 40(b) if 'remuneration' paid to working partners is within the limit u/s 40(b)(v)

Facts

The appellant is a partnership firm, engaged in construction business. Income of INR 1.22 crores was declared in e-return for the AY 2017-18. Thereafter, the case was selected for scrutiny through CASS for high ratio of refund to TDS, large value claim of refund and large increase in capital in a year. Income was assessed at INR 4.84 crores after making several disallowances. Aggrieved, the appellant preferred an appeal before the ld. CIT(A) and succeeded aggrieved with which the Revenue is in appeal before this Tribunal.

- Ground No. 1 relates to disallowance of excess commission paid u/s. 40(b)(v) of the Act. The ld. AO noted that the profit-sharing ratio of the three partners is 38:1:1 but commission to the first partner was allowed @ 89.09%, which was excess by 51.08%. The CIT(A) held that the amount payable to all the three working partners was not only within the permissible limits and authorized by the partnership deed but the same was correctly distributed amongst the working partners according to the partnership deed only. In view of the same, the disallowance of INR 0.66 crores made by the AO on this account was deleted and this ground of appeal was allowed.

- Ground No. 2 is regarding non deduction of TDS on commission paid to partners. The ld. AO alleged that the appellant failed to deduct TDS on the commission paid to its partners. The disallowance of INR 14.83 lacs made by the AO under section 40(a)(ia) of the Act was deleted by Ld. CIT(A) placing reliance on the decision of **ITAT Chandigarh in the case of Assam Tea House, Chandigarh Vs. Department of Income Tax in ITA No.759/Chd/2011**. The CIT(A) observed that as per Explanation 2 to Section 15 of the Act which specifically provides that salary, bonus, commission, remuneration etc. by whatever name called due to or received by a partner of a firm from the firm shall not be for regarded as "salary" the purposes of this section. Accordingly, provisions of Section 192 related to salary would also not be applicable in cases where remuneration has been paid by partnership firm to its partners.

- Ground No. 3 is the disallowance of INR 3.62 crores towards various expenses claimed by the appellant. The ld. AO made the said disallowance since the appellant failed to file necessary evidence in the course of the hearing and also observed that it cannot be denied that major expenses were incurred in cash. In this regard at the same time full reliance cannot be placed without any documents i.e. .

bills/vouchers etc. The ld. AO made the disallowance @ 3.5% of the material consumed for construction work, 3% of the expenses incurred labour charges, 3% of stores and spares expenses and 10% of other direct expenses and travel and conveyance.·However, the ld. CIT(A) deleted the said disallowance observing that a high-pitched assessment has been concluded by the ld. AO in the present 'non-adversial tax regime'. Neither any deficiency has been pointed out nor any specific defect has been brought on record by the ld. AO in the audited books of the appellant. Therefore, such disallowances is made on account of conjectures and surmises, which are definitely not permissible.

Ruling

- Ground No 1: ITAT held that the above findings of the ld. CIT(A) remain uncontroverted before us by the ld. DR. Considering the fact that since salary, bonus, remuneration or commission are collectively termed as "remuneration" and the remuneration paid during the year is within the permissible limit provided u/s 40(b)(v), therefore, we fail to find any infirmity in the findings of the ld. CIT(A). Thus, ground no. 1 is dismissed.
- Ground No 2: ITAT stated that the finding of the ld. CIT(A) on fact and considering the judicial precedence remains uncontroverted by the ld. DR placing any other binding precedent in its favour. Therefore, considering the provisions of Explanation 2 to Section 15 which includes salary, bonus, commission or remuneration received by partner under the head 'salary' and considering the provisions of section 192 which talks about the salary given u/s 15, thus, we are inclined to confirm the findings of the ld. CIT(A) that there is no requirement under the provisions of the Act for deduction of tax at source by the partnership firm on salary, bonus, commission or remuneration etc. or whatever name called given or credited to a partner of a firm. Thus, we fail to find any infirmity in the findings of the ld. CIT(A). Ground no. 2 was also dismissed.
- Ground No 3: ITAT, on facts of the case observed that no proper documents to support such claim were filed by the appellant before the ld. AO and looking to quantum of expenses and lack of sufficient evidence filed before the lower authorities, we sustain disallowance of expenses at INR 15 lacs as against of INR 3.62 crores made by the ld. AO under various heads of expenses. Thus, ground no. 3 raised by the revenue is partly allowed.

Source: ITAT, Gauhati in ACIT vs M/s Dhar Construction Company vide ITA No. 181/Gau/2020 on January 02, 2023

Discussion in assessment order satisfies requirement u/s 14A(2) of recording of satisfaction of AO for invoking Rule 8D and nothing more is required

Facts

The appellant company is engaged in the business of earning income by way of interest from inter corporate loans and in the investments in the companies apart from lease of buildings for business purposes. Appellant also claims to have been doing business of money lending. For the AY 2010-11, it has filed its return of income declaring loss of INR 1.11 crores. During the course of assessment proceedings, Ld. AO observed as under:

- The appellant treated a sum of INR 38.86 lacs as income from business, though derived by way of rent, instead of income from house property. Appellant pleaded that leasing is one of the objectives of the business. Ld. AO, however, treated it as 'income from house property' and recomputed the same. The AO further observed that the appellant earned interest income and claimed the lending as main business activity. The AO, however, was of the opinion that since the appellant did not have any permission or approval from the RBI, it is not expected to conduct any money lending business as non-banking financial institution, and, therefore, and income from such activity has to be treated as 'income from other source'. On a perusal of the P&L Account, AO found that and amount of INR 3.41 crores was paid as interest on borrowed funds, whereas during the year though the appellant borrowed a sum of INR 21.55 crores, no amount was advanced and, therefore, no portion of such borrowed fund was used for the business of the appellant and accordingly, entire interest expenses attributable to such loan has to be disallowed. Ld. AO accordingly disallowed INR 1.52 crores
- The appellant acquired INR 1.54 lacs shares of M/s. Ind-Barath Power Infra Ltd., at a premium of INR 240 per share, which the appellant claims to have sold to the same company at the face value of INR 10 thereby incurring a long-term capital loss of INR 4.53 crores against the indexed cost of acquisition at INR 4.69 crores. Considering these aspects, AO did not believe the statement of the appellant that they sold the shares at INR 10 per share to incur the losses. He, therefore, added the difference between the purchase price and sale consideration in respect of such shares transacted by the appellant (i.e. INR 3.70 crores) to the income of the appellant.

Aggrieved by the additions, appellant preferred appeal before the learned CIT(A). Insofar as the income from house property is concerned, learned CIT(A) directed the AO to allow the deduction u/s 24(b) on the appellant furnishing the relevant figure of interest. For the treatment of profits from money lending under the head 'income from other sources' by the AO and allowing the interest only to the extent of incurring for the

exclusive purpose of earning the same is concerned, learned CIT(A) found fault with the approach of the AO on the premise that for conducting the business of money lending, simply because registration did not take place, it cannot be said that business was not conducted or the indexed cost of acquisition earned there from cannot be treated as 'business income'. Learned CIT(A), however, found that the appellant invested in equity shares but rejected the contention of the appellant that the source of such investment is its own funds. According to the learned CIT(A), the balance sheet of the appellant reveals that the appellant revalued the assets in land and equity shares, and such revaluation amount does not give rise to any cash flow for investment in equity. Learned CIT(A), therefore, took a view that interest expense only to the tune of INR 43.59 lacs alone could be attributed for business purpose and the balance out of INR 3.41 crores claimed by the appellant as interest has to be treated as for non-business purpose. Since the AO disallowed only a sum of INR 1.52 crores on this score, learned CIT(A) thought it fit that the allowance of the balance must be subject to the restriction that the depreciation on building from which rent was earned not to be allowed, disallowance u/s 14A and interest on borrowed capital allowed u/s 24(b) has to be disallowed.

Ruling

ITAT held that it could be seen from the impugned order that there was an objection taken before the learned CIT(A) to invoke the provisions u/s 14A read with rule 8D on the ground that such an aspect does not flow from the assessment order. ITAT stated that the Ld. CIT(A) rightly rejected that contention stating that this income flew from the investment, the AO treated the exempt income as such, but failed to make the statutory deduction and, therefore, while exercising the plenary powers, it is incumbent upon the learned CIT(A) to look into the aspect of disallowance which the AO failed to do. ITAT was thus in agreement with this finding of the learned CIT(A). The Ld. Tribunal directed the AO to recompute the disallowance while taking the average value only of the exempt yielding investment into consideration and by restricting the disallowance to the exempt income earned during the year under consideration.

Source: ITAT, Hyderabad in M/s Chintalapati Holdngs Pvt. Ltd. vs DCIT vide 385/Hyd/15, 385/Hyd/15 & 1730/Hyd/16 on January 16, 2023

When TDS was duly deducted at source by employer from salaries credited/paid, benefit of such TDS had to be allowed in intimation u/s 143(1), notwithstanding fact that it was not deposited

Facts

The appellant has been an employee of M/s. Earth Water Limited working as Chief Operating Officer. Return was furnished declaring total income under the head 'Salaries' at INR 38.57 lacs after claiming TDS credit of INR 9.05 lacs on such salary income. The return was processed u/s 143(1) allowing TDS credit only to the tune of INR 0.83 lacs. The remaining amount of TDS of INR 8.21 lacs was not allowed credit on account of "Mismatch". The appellant argued before the ld. CIT(A) who countenanced the Intimation u/s 143(1) in not allowing credit for INR 8.21 lacs because same is not reflecting in Form 26AS. Aggrieved thereby, the appellant has come up in appeal before the Tribunal. Before the Tribunal, it was submitted that the essence of clause (c) of section 143(1) is to allow adjustment of tax deducted or collected at source or advance tax etc. against the tax liability on total income. The appellant also submitted that the important thing to be borne in mind in this regard is that though the word 'paid' has been used after the words 'advance tax', but it is absent in the context of 'tax deducted at source'. The effect of this is that unlike advance tax, the credit for tax deducted at source is to be allowed only when it is deducted and there is no further stipulation of the same having been paid also as a condition precedent. As a sequitur, credit for the amount of tax deducted at source is not dependent upon its subsequent deposit by the deductor. Once there is deduction of tax at source, the benefit of such tax deduction has to be allowed in the hands of deductee u/s 143(1) irrespective of its subsequent deposit or non-deposit by the deductor.

Ruling

Ld. Tribunal stated relied upon the Finance Act, 2012 wherein a proviso to section 209(1) nullifying the above position of deducting income on which tax is deductible but not actually deducted has been inserted. Instantly, we are confronted with a situation in which the deductor has duly deducted tax at source but not paid the same to the exchequer. Albeit gap between 'tax which would be deductible' as per section 209(1)(d) and 'tax deducted at source' has been abridged by insertion of proviso to section 209(1), but the open space between the 'tax deducted at source' as per section 143(1)(c) and 'tax deducted at source and deposited' still persists. ITAT concluded that that the requirement for allowing credit is only of the amount of tax deducted at source and not the amount eventually getting deposited with the Government after deduction. Since a sum of INR 8.21 lacs was duly deducted at source by the employer from the salaries credited/paid to the appellant for the year

under consideration, we hold that benefit of such tax deducted at source has to be allowed in Intimation u/s 143(1) notwithstanding the fact that it was not deposited. The impugned order is overturned pro tanto. The appeal was therefore allowed.

Source: ITAT, Pune in M Mukesh Padamchand Sogani vs ACIT vide [2023] 147 taxmann.com 24 (Pune-Trib.) on January 30, 2023

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