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CHARTERED ACCOUNTANTS

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Supreme Court Rulings

Disposes of SLP involving constitutionality of Sec 144B(9) retro-amendment as assessment remitted by HC

Facts

The matter has been remitted in order to give an opportunity to the appellant of being heard. However, learned counsel for the appellant submitted that certain contentions touching upon the constitutional validity of Section 144-B(9) as well as the exercise of jurisdiction u/s 143(2) were raised in the writ petition and being aggrieved by the impugned order, this special leave petition has been filed.

Rulings

We note that since the matter has been remitted to the Assessing Authority to be considered on merits, we dispose of this Special Leave Petition reserving liberty to the appellant to revive this petition in the event the appellant is unsuccessful before the statutory authorities so as to raise the contentions raised in this special leave petition on the other aspects of the matter. Accordingly, the pending application(s) was disposed of.

Source: Supreme Court in Sapna Flour Mills Ltd vs Union of India & Ors. vide SLP No. 24418/2023 dated September 11, 2023.

Employee's PF contribution allowable since deposited immediately after national holiday

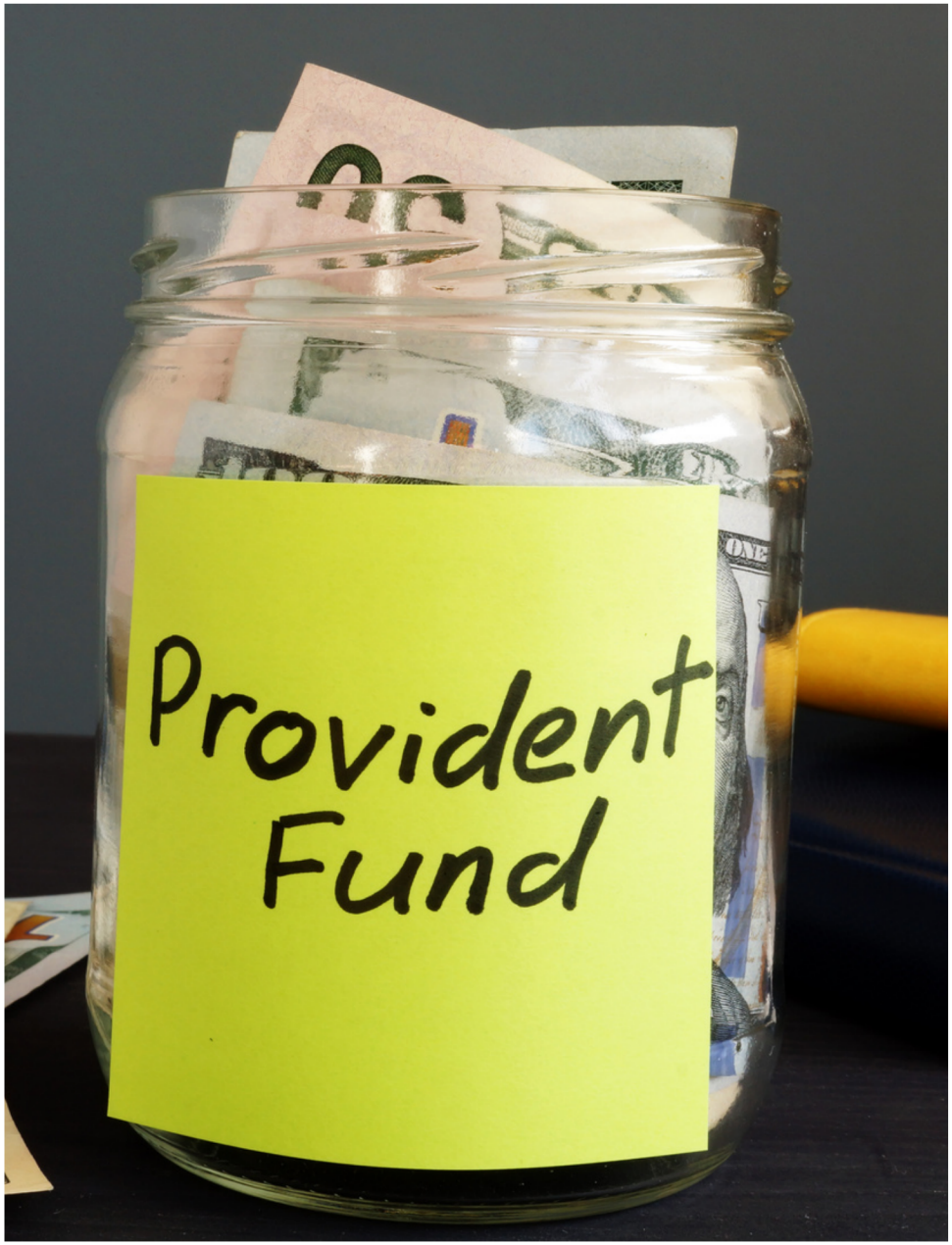
Facts

The ld. counsel, who appeared on behalf of the appellant, stated that since the deposit of the employee's contribution towards the provident fund was made on 16-08-18, following a National Holiday i.e., 15-08-18, the deduction claimed would have to be allowed, as steps had been taken by the appellant towards the deposit of the said amount on 14-08-18. The ld. senior standing counsel, who appears on behalf of the Revenue, says that since the appellant had deposited the employee's contribution towards the provident fund amounting to INR 1.56 crores on 16-08-18, the AO had rightly disallowed the deduction, as the due date has already lapsed.

Rulings

HC held that the submission advanced by the ld. Counsel of the Revenue cannot be accepted since the due date fell on a date which was a National Holiday, the deposit could have been made by the appellant only on the date which followed the National Holiday. HC further stated that as noticed Section 10 of the General Clauses Act would help the appellant to tide over the objections raised on behalf of the Revenue. Therefore, this question of law, is answered against the Revenue and in favour of the appellant. Accordingly, the appeal is closed, in the aforesaid terms.

Source: High Court, Delhi in PCIT vs Pepsico India Holding Pvt. Ltd vide ITA No. 12/2023 dated September 05, 2023.



Appellant eligible for VsV settlement despite pending prosecution; follows Macrotech Developers ruling

Facts

The Appellant had filed its return of income for AY 2010-11 declaring a total income of INR 26.06 lacs and for AY 2011-12 declaring a total income of INR 13.37 lacs. The tax due on the income returned was duly paid by way of TDS, advance tax and self-assessment tax. The return filed by appellant for both the AYs was processed u/s 143(1). Subsequently, assessments for both the AYs were reopened u/s 147 by issuance of notice u/s 148. Re-assessment proceedings were concluded and the AO passed an assessment order u/s 144 r.w.s. 147 assessing appellant's income for AY 2010-11 and AY 2011-12 at INR 11.69 crores and INR 34.88 lacs respectively. The appeal was dismissed by CIT(A) and appellant's appeal before the ITAT is still pending. The Assessing Officer also initiated proceedings for imposition of penalty u/s 271(1)(c). In the meantime, DTVSV Act was notified and appellant decided to take advantage of the provisions of DTVSV Act and, therefore, the appellant filed declarations for both the AYs. Appellant's declaration was rejected for the reason that prosecution has been launched on it. The AO also stated that that whether or not the prosecution relates to tax arrears (say for delay in filing of return, delay in deduction of TDS, etc.), the taxpayer is dis-entitled to apply for settlement of pending appeal in relation to the tax arrears under the DTVSV Act. The Appellant, therefore, approached High Court. As permissible under Office Memorandum, appellant had even deposited 20% of the demand and hence, the appellant is not in default.

Rulings

HC stated that it must be noted that under Section 9(a)(ii) of DTVSV Act, the only exclusion visualized is a pendency of prosecution in respect of tax arrears relatable to an AY as on the date of filing the declaration and not pendency of a prosecution in respect of an assessment year on any issue. In the petition before us also prosecution has been instituted against appellant u/s 276C(2). HC stated that in our view, Macrotech will squarely apply to the facts and circumstances of this case. The declaration of appellant filed for both the AYs would have to be decided by Respondent in conformity with the provisions of DTVSV Act. Petition was accordingly allowed to the above extent.

Source: High Court, Bombay in Pragati Pre Fab India Pvt. Ltd. vs PCIT vide [TS-552-HC-2023(BOM)] dated September 12, 2023.

Active state of PAN, no reason to initiate reassessment against merged company

Facts

It is the case of the petitioner that DPS and petitioner's Company, i.e. Delta Electronics India Pvt. Ltd. (DIN) proposed a scheme for amalgamation (DPS being Transferor company or amalgamating company and DIN being Transferee company). The amalgamation process was approved by National Company Law Tribunal and was also informed to the Revenue. The revenue participated in the amalgamation proceedings before the NCLT. The revenue issued notice u/s 148A against the Transferor company specifying, that the PAN of the Transferor company was active which was replied by the petitioner bringing it to the notice of the revenue the factum of amalgamation. As also indicating that with effect from the appointed date, all the transactions entered and appeared on the PAN of Transferor company has been duly accounted by the petitioner's company being amalgamated company in accordance with the generally accepted accounting policy and other applicable laws. The revenue further gave notices to the Transferor company u/s 148A which were replied by the petitioner reiterating the same stand with further elaborating the facts. Thereafter, the order under Section 148A(d) was passed for reopening of the assessment of the Transferor Company. The revenue has filed its counter affidavit. It has also been admitted by the revenue that the factum of amalgamation has duly been informed to them. The revenue records that, the Transferor company has become non-existent post amalgamation, but the PAN of appellant lying a-float and was active due to the non-action/failure on the part of the appellant in the surrendering the PAN. It has been the objection of the revenue that the petition deserves to be dismissed.

Rulings

Admittedly, the petitioner had informed the revenue of the amalgamation process. In the judgment of the NCLT, observation has been made with regard to the submissions that were made by the revenue in the amalgamation proceedings. In the same paragraph, the NCLT has noted the undertakings that were given by the Transferee company, by which the Transferee company, i.e. the petitioner, undertook that the scheme of amalgamation would ensure that the statutory dues, tax, etc., that are due and payable by the Transferor company subsequent to the merger, would stand transferred to the Transferee company.

In view of the settled law, from the appointed date, under the scheme of amalgamation, the existence of the Transferor company had merged into the Transferee company. That is what the scheme of amalgamation that has been proved in the instant case by NCLT also provides. It also provides for business and property-in-trust in the scheme of amalgamation. Mere activation of PAN number may not give a right to the revenue to issue notice to a nonexistent entity. Admittedly, in the instant case, the notice was given to the Transferor company, which is a non-existent entity, after the appointed date. Admittedly, the order u/s 148A(d) has been passed by the revenue against a non-existent entity. Therefore, the order is bad in the eyes of law. Accordingly, the petition was allowed.

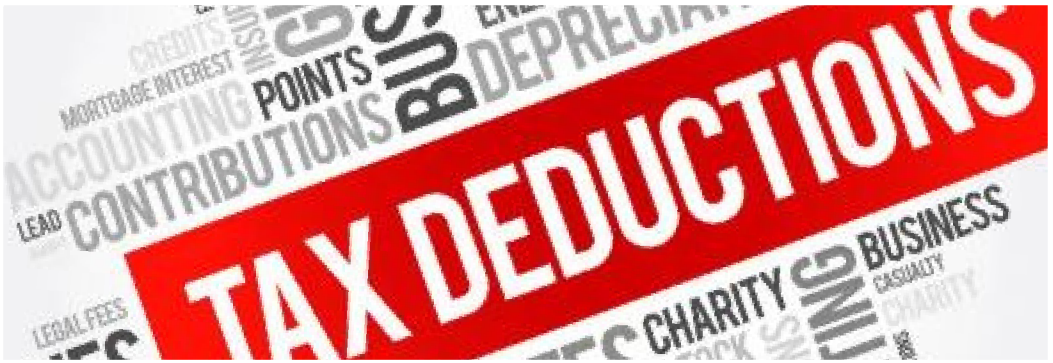
Source: High Court, Uttarakhand in Delta Electronics India Pvt. Ltd. vs PCIT vide Writ Petition (M/S) No. 1557 of 2023 dated September 22, 2023.

Deduction u/s 80P allowable through belated return vide prospective amendment in FA 2021 to Section 143(1)(a)(v)

Facts

The appellant is a credit co-operative society has e-filed its ITR declaring total income of NIL after claiming a deduction u/s VI-A with sum of INR 17.18 lacs. The ITR of the appellant society was e-processed by disallowing deduction claimed by virtue of provisions of Section 143(1)(a)(v). Aggrieved, appellant challenged the denial of deduction before first appellate authority in an appeal u/s 246(1). The ld. NFAC confirmed the disallowance. Aggrieved appellant had come up before the Tribunal by alleging the action of tax authorities as untenable in law.

The ld. Counsel of the appellant stated that if appellant fails to make a claim in return of income, then no deduction u/c VI-A shall be allowed irrespective of reason of its failure. Further from AY 2018-19, clause (ii) of section 80AC makes claim for deduction harder by subscribing that, no deduction u/c VI-A of the Act shall be allowed to appellant unless a return of income making a claim for deduction therein is furnished within a due date prescribed u/s 139(1), i.e. return filed within the due dates could only be eligible for deduction u/c VI-A.



Rulings

ITAT noted that, the appellant societies have furnished their ITR belated and however those were filed with an eligible claim for 80P deduction therein. Therefore, jurisdiction of ld. CPC u/s 1453(1)(a)(v) is not available as the matter of fact that was amended by the Finance Act, 2021 wherein instead of reference to Sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80- ID or Section 80-IE, the provision instead makes a mention of Section 10AA or under any of the provisions of Chapter VI-A under the head “Deductions in respect of certain incomes”. However, for the ld. CPC to insist upon the compliance by way of making a disallowance owning to filing the return belated, the power vested in the said Authority only vide Finance Act, 2021 and came into effect accordingly. Therefore, in the absence of the enabling jurisdiction provisions, the ld. CPC lacked the jurisdiction to make any disallowance of claim made u/s VI-A while processing the return summarily u/s 143(1)(a)(v).

Consequently, ITAT set-aside impugned orders of ld. NFAC and directed them to reverse the disallowance and accept the claim of deduction u/c VI-A as made in the return of income filed by both these appellants.

Source: ITAT, Panaji in Shri Bhagyalaxmi Co-Operative Credit Society Ltd. vs DCIT vide ITA No. 001/PAN/2023 dated September 01, 2023.

Reopening of assessment concluded prior to introduction of 16 years extended limitation rejected by ITAT

Facts

The ld. DR submitted that the ld. CIT(A) has erred in quashing the assessment order relying on the decision of Hon'ble Delhi HC in the case of Brahm Dutt vs ACIT [100 taxmann.com 324 (Del.)] without appreciating that the amendment to section 149(1) by Finance Act 2021, was retrospective in nature in view of explanation to section 149 of the Act as has been held by ITAT Mumbai in the case of Dilip J. Thakkar [135 taxmann.com 208 (ITAT Mumbai)] after considering the judgment of Hon'ble Delhi HC in the case of Brahm Dutt. Therefore, conclusion of ld. CIT(A) quashing the reassessment order may kindly be reversed restoring the reassessment order.

Replying to the above, the ld. AR drew ITAT's attention towards relevant paras of first appellate order and submitted that when the assessment for AY 2003-04 had attained finality and thus the last date of issuing notice was expired on 31-03-10 before insertion of amendment in section 149 on 01-07-12, then the ld. CIT(A) was right in following the ratio of the judgment of Hon'ble Delhi HC in the case of Brahm Dutt wherein it was held that on 22.03.2021 the AO has no power to assume jurisdiction u/s 147 for initiation of reassessment proceedings and thus impugned reassessment order was rightly quashed by the ld. CIT(A).

Rulings

ITAT noted that the Hon'ble Delhi HC in the case of Brahm Dutt vs. ACIT rendered preposition that amendment to section 149 by Finance Act 2012, which extended limitation for reopening assessment to sixteen years, cannot be restored to for reopening proceedings concluded before amendment became effective. In that case, the first issue before HC was, as to whether AY 1998-99 could not have been reopened beyond 31-03-05 in terms of provisions of section 149 as applicable at relevant time. Hon'ble HC answered in affirmative. ITAT also stated that we are unable to see any ambiguity and perversity or any other valid reason to interfere with the findings recorded by the ld. CIT(A) while quashing the reassessment notice u/s 148 dt. 20-03-20 and impugned reassessment order dt. 18-06-21 u/s 147 r.w.s. 143(3) by relying ratio of the judgment of Hon'ble jurisdictional High Court. Accordingly, ground of Revenue was dismissed.

Source: ITAT, Delhi in DCIT vs Anand Persad Jaiswal vide ITA No. 2742/Del/2022 dated September 06, 2023.

ITAT finds Sec.28(va) inapplicable; Quashes revision over taxability of receipts as non-compete fee

Facts

The Ld. AR advanced arguments supporting the case of the appellant. Our attention has been drawn to financial statements to support the case of the appellant. A plea of possible view has also been taken. The ld. CIT-DR, on the other hand, submitted that impugned issue was not examined by ld. AO during the course of original assessment proceedings and therefore, jurisdiction u/s 263 was validly exercised. Both the sides have filed written submissions which have duly been considered by us. The ld. AR has averred that ld. AO issued notice u/s 142(1) and raised a specific query on the issue of income under the head 'capital gains' which was duly responded by the appellant. Accordingly, a view was taken in the assessment order which was one of the possible views and hence, this fact do not justify invocation of impugned revision u/s 263.

The Ld. CIT-DR averred that it is evident from the fact that the appellant voluntarily accepted disallowance u/s 14A to the tune of INR 24.87 lacs on account of expenditure incurred for investment made for earning the exempt income. However, no such disallowance has been made by ld. AO in the assessment order. Non-consideration of the said disallowance clearly establishes that ld. AO did not apply his mind on the submissions made by the appellant. The ld. AO failed to make the additions based on the consent given by the appellant during the course of original assessment proceedings.

Rulings

Upon perusal of assessment order, it could be seen that one of the notices u/s 142(1) was issued to the appellant calling for certain details to which the appellant filed requisite details. The assessment order takes note of the replies of the appellant in opening paragraph. In a notice, the appellant was, inter-alia, directed to give a detailed note on business activity carried on by it during the year along with audited financial statements and return of income. The appellant furnished various details and submissions wherein, the appellant explained the transaction of Termination of Call option agreement and substantiated its stand as to why the aforesaid income would be taxed as capital gains. To support the same, the appellant relied on the decision of Hon'ble Supreme Court in the case of Vodafone International Holdings BV (341 ITR 1) which triggered amendment to Sec. 2(14) and the amendment provide that property would include any rights whatsoever in relation to an Indian Company. Therefore, the right to purchase the shares would fall within the purview of definition of capital assets post amendment to Sec. 2(14). The consideration received subsequently upon termination of call option agreement resulting into relinquishment of right to purchase the shares would amount to transfer u/s 2(47) exigible to tax u/s 45. The appellant also made submissions on disallowance u/s 14A and submitted that the appellant inadvertently missed to allow entire expenditure incurred during the year for INR 24.87 lacs and submitted that the gains could be increased by that amount. Along with this reply the appellant furnished Call option agreement as well as call option termination agreement. Considering appellant's reply, ld. AO framed the assessment accepting the returned income of the appellant. In the light of AO's query and the appellant's reply thereto, it could be said that the impugned issue of nature of sale consideration on Call Termination Agreement was very much considered by ld. AO during the course of assessment proceedings. The view taken by ld. AO was one of the possible views which, considering the amendment to Sec. 2(14), was one of the possible views.

The argument that the payment received by the appellant was in relation to non-compete and non-solicit application is not supported by the terms of the termination agreement. In the present case, the appellant had a definite right to buy certain shares and the appellant has transferred this right to another entity for a sale consideration which has been offered to tax. The consideration was not received for not carrying out of any activity in relation to any business or profession. Neither there was a bar on the appellant to purchase further shares of Aircel Ltd. Therefore, the provisions of Sec. 28(va) would not apply. The termination of the call option merely relinquishes the right of the appellant company to buy shares of Aircel Ltd. There is no element of non-compete obligation inherent in the agreement which would trigger the provisions of Sec. 28(va) as alleged in the impugned order.

Source: ITAT, Chennai in M/s. Sindya Securities & Investments Pvt. Ltd. vs ACIT vide ITA No. 438/Chny/2022 dated September 08, 2023.

Sec.115BAA concessional tax-rate allowable in subsequent AYs if Form 10-IC filed in first AY

Facts

The appellant is a resident corporate entity engaged in providing Information Technology Enabled Services in the nature of customer relationship management services. For the year under dispute, the appellant had filed its return of income u/s 139(1), declaring total taxable income of INR 358.03 crores. The appellant computed its taxable liability and paid tax, including interest and surcharge by applying the provisions of section 115BAA. The return of income filed by the appellant was processed by CPC. In the intimation issued u/s 143(1) to the appellant, the CPC computed the tax liability of the appellant by denying the benefit of concessional rate of tax, as per the provisions of section 115BAA. Challenging such computation of tax liability by the CPC, the appellant preferred an appeal before the first appellate authority. However, the first appellate authority dismissed the appeal of the appellant by holding that since the appellant has not exercised a fresh option u/s 115BAA for the AY under dispute, it is not entitled to claim the benefit of concessional rate of tax under the said provision.

Rulings

ITAT, in its view, states that the second proviso to section 115BAA(5) makes it abundantly clear that once option for concessional tax regime u/s 115BAA is exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year. In fact, the department has issued a FAQ clearly stating that if an appellant has opted for concessional rate of tax once, it shall apply to subsequent assessment years and cannot be withdrawn. Even, in the instructions issued by the Departmental for filing Form ITR 6, it has been specifically mentioned that Form 10IC is required to be filed only in the first year wherein concessional rate of taxes was opted for the first time by an appellant.

Thus, not only the statutory provisions, but the clarifications issued by the Department from time to time clearly states that the appellant seeking benefit under concessional rate of tax u/s 115BAA has to exercise its option in Form 10IC only once in the initial assessment year, wherein, he intends to avail the benefit, and thereafter, there is no need for exercising the option again. That being the statutory mandate, in our view, the Departmental Authorities have gone completely wrong in denying the benefit of concessional rate of tax u/s 115BAA to the appellant on the misconceived notion that the appellant again has to file Form No. 10IC for the impugned assessment year. In view of the aforesaid, the order of learned first appellate authority was set aside by the ITAT and the AO was directed to allow appellant's claim of concessional rate of tax u/s 115BAA, after factual verification.

Source: ITAT, Chennai in M/s. Sindya Securities & Investments Pvt. Ltd. vs ACIT vide ITA No. 438/Chny/2022 dated September 08, 2023.

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