Polaris Consulting and Services Ltd TCA No. 292 of 2018 Madras high Court Against Assessee

Issues discussed and addressed:

Disallowance u/s 14A

Facts of the Case:

The assessee is a Company engaged in the business of software development and for the assessment year under consideration (AY 2010-11), the assessee filed its Return of Income computing a total income at Rs. 52,87,83,933/- under normal computation and Rs. 137,13,42,888/- under Book Profit Method. The assessee earned Dividend income of Rs. 14,76,75,464/- from investment in shares. The assessee claimed that he did not incur any expenditure for earning the said income. The Assessing Officer while completing the assessment under section 143(3) read with Section 92CA(4) by order dated 28-3-2014, disallowed a sum of Rs. 1,71,68,777/- under section 14A of the Act read with Rule 8D of the Income-tax Rules (Rules). The Assessing Officer in doing so rejected the assessee's contention that no expenditure was incurred for earning the exempt income.

Held by the Authorities:

The assessee's contention was that no expenditure was incurred by them for earning the exempt income. The assessee were not able to substantiate that fact before the authorities or before the Tribunal. Both CIT(A) and the Tribunal reappreciating the factual matrix and found that the investment during the year increased from Opening Balance of Rs. 3,21,68,40,000/- to Closing Balance of Rs. 5,17,93,70,000/-. Further the Assessing Officer also found that the value of the assets also increased substantially to Rs. 1,84,18,32,000/- from Rs. 1,76,96,30,000/- and therefore applied Rule 8D and made additions under section 14A of the Act and we find no error in the order of the Assessing Officer as confirmed by the CIT(A) and the Tribunal.

Sri Ram Samaj TCA Nos 896 and 899 of 2018 Madras high Court

Issues discussed and addressed:

Exemption u/s 11

Facts of the Case:

The appellant society operates a community hall 'Ayodhya Aswamedha Mandapam', a marriage function centre 'Mithalapuri Kalyana Mandapam' and a unit to facilitate performance of customary and traditional rites connected with funeral obsequies named 'Gnanavapi'. The corresponding income received from these properties, is classified as income from House Property. The Assessing Officer pointed out that such

categorization of the nomenclature of the head of receipt of income as "income from House Property" is incorrect.

The Authorized Representative of the appellant society pleaded that the same is an income derived from house property only, relying on the decision of High Court of Madras in the case of Chennai Properties and Investments Ltd., reported in 136 Taxman 202 (MAD).

The Assessing Officer pointed out that such reliance is misplaced. There is no such relationship of landlord and tenant subsisting. In case of profitable entities would obviously be in the nature of business income and a different classification in respect of the operations by a non profitable organization appears to be unfair. Therefore, the claim that the income derived from these units is Income from House Property is not entertained.

It is further pointed out by the Assessing Officer that the objects of the Trust fall under the main limbs of charitable purpose being education, medical relief and relief to the poor. The income from Community Hall, Kalyana Mandapam and Gnanavapi are used to offset the cost in maintaining schools run by the Trust and hence proviso to Section 2(15) cannot find an application so as to bring the income from running of Kalyana Mandapam to tax.

The Assessing Officer held that the business of running Community Hall, Marriage Hall and Gnanavapi cannot be treated as an incidental business eligible for exemption u/s. 11(4A). It is pointed out that "since the society whose charitable purpose is an object of General Public Utility has ventured in the nature of trade, commerce or business during the year and had also received a fee as consideration for the services rendered, which is in excess of Rs. 10 Lakhs, the proviso to section 2(15) gets invoked, inexorably." It is also held that since the proviso to section 2(15) is invoked, the provisions of section 11 & 12 become inoperative.

Held by the Authorities with respect to issue No 1:

The first substantial question of law raised by the appellant is that as to whether Section 2(15) of the Act would be attracted to the assessee case where the earned income from letting out of Kalyana Mandapam, Gnanavapi is utilized and the entire revenue derived therefrom is used to offset the cost in maintaining schools run by the Trust, thus, towards charitable objects such as Education and Medical relief to the poor. The contention of the assessee before the CIT (Appeals) is that the surplus income from Community Hall, Kalyana Mandapam and Gnanavapi was utilized only to meet the shortfall in the income of the educational institution and that contention was rejected by the CIT (Appeals).

On a perusal of the entire records, it is apparent that even though the appellant trust is running Kalyana Mandapam, Gnanavapi and Community Hall, the income derived there from cannot be construed as business income as the very object of the Trust is for charitable purpose and it should be incidental for the Trust.

The fact remains that there is no records to show that all the income derived from Kalyana Mandapam, Gnanavapi and community hall are not used for the objects of the trust but whereas the fact remains that they spent all the income from the Kalyana Mandapam, Gnanavapi and Community Hall only for the educational purpose and medical relief to the poor, which are the objects of the trust. Under these circumstances, the appellant is entitled for exemption and income derived from Kalyana Mandapam, Gnanavapi and Community Hall cannot be treated as business of the trust. The trust has not conducted any business. Whatever income earned from the Kalyana Mandapam, Gnanavapi and Community Hall, is utilised for the educational purpose and the society is running Educational Institution, which is the primary object of the trust; on the other hand, running Kalyana Mandapam, Gnanavapi and Community Hall is not a primary object.

Whether the income derived from letting out of Kalyana Mandapam, Community Hall and Gnanavapi owned by the appellant/assessee is the income from the House property or business income and whether the same is liable to be taxed or exempted is the other question. The contention of the assessee is that since utilization of the surplus income from the running of Kalyana Mandapam, Community Hall and Gnanavapi are for the objects of the trust, it is exempted from tax.

The matter is remitted back to the Assessing Officer for *de novo* consideration as to whether the entire revenue derived from letting out of Kalyana Mandapam, Gnanavapi and Community Hall are utilized for charitable objects of the Trust and also to consider as to whether the income received from the properties of the Trust namely, Community Hall, Kalyana Mandapam and Gnanavapi to be classified as "income from House Property" or "business income" since the income therefrom is utilized for charitable purpose of the trust. The Assessing

Veena Goyal ITA Nos. 75, 76 (J.P) of 2020 Jaipur ITAT

Issues discussed and addressed:

Issue No 1 Deemed Dividend Issue No 2 Addition u/s 52(2)(vii)

Facts of the Case with respect to Issue No 1:

The assessee who is a Share Holder in M/s Pinkcity Jewelhouse Pvt. Ltd. having more than 10% voting power had applied for allotment of shares of the Company Pinkcity jewel House Pvt Ltd. The assessee accepted the offer and applied for allotment of 11,20,000 shares and paid the value of shares amounting to Rs. 1,12,00,000/- through various cheques. The cheque was handed over to the company along with share applications. The assessee was also having a running account in the company in which he had a credit balance. The Company allotted the shares without presenting the cheque for clearance before allotment and made credit entry for these cheques in her ledger account as well as debited the value of shares to her running account and therefore her account never represented a debit balance. However, two Cheque of Rs. 35,00,000/- each which were credited in the books on 1-2-2013 & 2-2-2013 but the cheques was presented by the company after some time but during the current financial year, in the books of the assessee there was a credit balance of Rs. 20,00,000/- on 4-2-2013 even after debit of Rs. 70 Lacs for Share Application money but the learned ACIT has treated the same as deemed dividend u/s 2(22)(e) of the Income-tax Act and made the addition.

Held by the Authorities with respect to Issue No 1:

The fact is that the assessee had made payment of value of shares along with the application for allotment of 1120000 shares thus she was not in default of making payment for value of shares applied for on her part. The Company M/s Pinkcity Jewelhouse Pvt. Ltd. did not present the cheque for claim before making the allotment and on allotment of shares on 4.2.13 debited the value of shares to the ledger account of the assessee, thus in fact there was no debit balance as on 4-2-2013. But the learned assessing officer due to the fact the cheque were cleared later on treated Rs. 50 Lacs as deemed dividend.

Provisions of Section 2(22)(*e*) of the Act comes to play only if the company makes any payment to such shareholder, by way of advance or loan and that too to the extent the company possesses accumulated profit, provided that his/her holding is not less than ten percent of voting power. From provisions of section 2(22)(*e*) it is clearly evident that the provisions of this section come to play only if the company makes any payment of advance or loan to a shareholder holding not less than ten percent of voting power. In the case of assessee, the company has not paid any sum and in fact amount is being debited by way of Journal Entry

and no amount or money has been given as loan or advance to the shareholder. The debit balance has been notionally worked out by the assessing officer by working out the balance in ledger account of shareholder on the basis of clearing date of cheque received (not paid) in the bank account, which is not correct. As per accounting principles entries in the books of accounts are required to be made on the basis of transactions entered which is the receipt of cheque, which was subsequently honoured by the bank, hence the entries appearing in the ledger account is correct and same cannot be ignored and balance cannot be worked out on notional basis and even if he wants to do the same, then also the amount was never paid to the Share Holder but in fact was received from the Share Holder and the date of debit should also be transferred to the date on which the amount was cleared. And as discussed earlier in no way by this company has paid any amount to the shareholder and thus provisions of section 2(22)(*e*) are not applicable.

Facts of the Case with respect to Issue No 2:

The facts of the issue is that the assessee was allotted 1120000 shares @ Rs. 10/- per share whereas the learned ACIT determined the fair market value of the share at Rs. 20.37 per share and made an addition of Rs. 1,16,14,400/-being the difference calculated between fair market value and that of face value under section 56(2)(vii)(c) of the Act.

Held by the Authorities with respect to Issue No 2:

As per the provisions of the section 56(2)(*vii*)(*c*)(*i*), any property other than immovable property is transferred for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000/-, the aggregate fair market value of such property as exceeds such consideration will be treated as income of the assessee. Following the above provisions of the Act, the learned ACIT has made an addition of Rs. 1,16,14.400/- treating the difference exceeding the consideration paid for shares as income of the assessee.

As long as there is no disproportional allotment of shares, there was no scope for any property being received by the tax payer as there was only an apportionment of the value of the existing shareholder over a larger number of shares, no addition u/s 56(2)(vii)(c) of the Act would arise in the present case. Before concluding that the difference of Rs. 10.37 can be treated as inadequate consideration or not, the ACIT had to work out prorate holding of the shares prior to allotment of 1120000 shares and after allotment of the same, as it is a settled decision of the Hon'ble Supreme Court.

Judgments Relied upon by the Authorities:

A. Sudhir Mennon HUF v. ACIT (TS146 ITAT 2014) (Mum.)

B. Dhun Dadabhoy Kapadia v. CIT [1967] 63 ITR 651 (SC)

C. H. Holck Larsen v. CIT [1972] 85 ITR 285 (Bom)

Central Academy Jodhpur Education Society ITA Nos. 790, 793 & 794 (JP) of 2019 Jaipur ITAT

Issues discussed and addressed:

Income to be charge to tax in case of violation of Section 13

Facts of the Case:

The assessee society registered under Rajasthan Societies Registration Act, 1958 and is also registered u/s 12AA of the Act. The assessee society filed its return of income declaring Nil income after claiming exemption u/s 11 of the Act.

However, during the course of assessment proceeding, the AO observed that the society has violated the provisions of Section 11A of the Act. Therefore, interest @ 12% was considered to be diversion of income of the society and accordingly exemption u/s 11 and 12 of the Act was denied and surplus as per income and expenditure account along with various additions made in the assessment order were assessed under the head Income from Business & Profession and charged to tax u/s 164(2) of the Act at Maximum Margin Rate (MMR).

Held by the Authorities:

From the facts of the present case, we noticed that the AO had denied exemption u/s 11 of the Act to the assessee on the ground of unreasonable payments of salary and allowances to the persons covered u/s 13(3) of the Act thereby violating section 13(1)© and investment of funds in the mode other hand that specified u/s 11(5), thereby violating section 13(1)(b) of the Act.

Now the question before us for consideration is that if there is a violation u/s 13 of the Act then the entire surplus is to be charged to tax or only a part of income which is not exempt u/s 11 by virtue of Section13(1)(*c*) or 13(1)(*d*) of the Act shall be charged to tax at MMR.

From the plain reading of this proviso, it is evident that where the whole or any part of the relevant income is not exempt u/s 11 or 12 because of the provisions of the section 13(1)(c) or 13(1)(d), tax is chargeable on the relevant income or part of the relevant income at the maximum marginal rate (MMR). Therefore, in case there is violation of sec.13 of the Act then the entire income of the trust is not liable to tax at MMR, but only the relevant part of the income which violates sec.13 attracts the MMR. In the present case, even if it is held that there is violation of sec.13, then only the amount of benefit given to the persons specified u/s 13(3) out

of the income of the trust is chargeable to tax at MMR. Hence, the action of AO in taxing the surplus at maximum marginal rate without considering the provisions of section 11 & 12 is bad in law.

Judgments Relied upon by the Authorities:

a. DCIT v. Working Women's Forum [2015] 235 Taxman 516 (SC)
b. CIT v. Fr. Mullers Charitable Institutions [2014] 227 Taxman 369 (SC)
c. CIT v. Fr. Mullers Charitable Institutions [2014] 363 ITR 230 (Kar.) (HC)
d. DIT(E) v. Sheth Mafatlal Gagalbhai Foundation Trust 249 ITR 533 (Bom.) (HC)
e. DCIT v. Mahatma Gandhi Charitable Society for Education & Research [ITA No. 359/JP/19 dt. 23-1-2020] (Jaipur) (Trib.)
f. Global Institute of Technology Society [ITA No. 1066/JP/2018order dt. 5-11-2018] (Jaipur) (Trib.)
g. Rajkala Charitable Trust v. ACIT [ITA No. 140/JP/15 dt. 28-4-2016] (Jaipur) (Trib.)

Rajasthan Nursing Council ITA No. 1283/JP/2019 Jaipur ITAT

Issues discussed and addressed:

Section 2(15)

Facts of the Case:

The assessee-Council filed an application in Form No. 10A for seeking registration U/s 12AA of the IT Act. On receipt of the application and after going through the documents and explanations so called for, the ld. CIT(E) issued a show cause dated 5-9-2019 to the assessee-Council stating that the applicant-Council is in receipt of direct income comprising mainly registration fees, counseling fees, examination fees, inspection fees, revaluation fees which form foremost part of the total income in each year stating from F.Y 2015-16 to F.Y 2017-18. It was further stated that the said income also describes the activities undertaken by the appellant-Council during the said period which is in the nature of "general public utility" and cannot be termed as charitable under the head "education". Further, the ld CIT(E) referring to the proviso to Section 2(15) of the Act, stated that where the assessee is engaged in charitable activities under general public utility then it has to comply with proviso to Section 2(15) of the Act. It was stated by the ld. CIT(E) that while deciding the case where the business activities are visible, the predominant object test is to be applied and also the business activities should be in the course of actual carrying out of such general public utility i.e. such business activities should only be incidental to the charitable object and hence should not be the predominant or primary activities by itself. Accordingly, a show cause was issued to the assessee Council as to how impugned receipts are charitable receipts in the light of proviso to section 2(15) and the activities

undertaken shall be assumed as charitable in nature and to explain why the application filed by you should not be rejected. In response, the assessee Council filed its submission contending that firstly, it is an educational institution and secondly, predominant object being charitable in nature, proviso to Section 2(15) is not applicable. The reply so filed by the assessee-Council was considered however, the same was not found acceptable and the ld. CIT(E) rejected the application of the assessee-Council.

Held by the Authorities:

The contentions advanced on behalf of the assessee Council is that firstly, it is an educational institution and therefore, clearly engaged in charitable purpose. Secondly, its predominant objective being education and not to earn profits, even where it is held to be a general public utility, the proviso to section 2(15) is not applicable. As against that, the contention raised on behalf of the Revenue is that the assessee Council is not engaged in the charitable purpose of education and is carrying out predominantly functions of a regulatory body and its activities fall under the category of "general public utility" and further, the proviso to section 2(15) is applicable as fees received are in nature of business receipts which forms substantial part of its total income and therefore, the assessee council cannot be held as charitable within the meaning of section 2(15) of the Act.

Now, coming to the proviso to section 2(15), it is a settled position that the proviso applies only if an institution is engaged in advancement of any other object of general public utility and postulates that such an institution is not "charitable" if it is involved in carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess, fee or any other consideration. In other words, an institution will not be regarded as established for charitable purpose if cess, fee or other consideration is received for carrying on any activity in nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business.

An exception has however been carved out wherein it has been provided that the institution will still qualify as an institution established for charitable purposes where any "such activity" is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and the aggregate receipts from "such activity or activities during the previous year", do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year. The phrase "such activity or activities carried out during the previous year" refers to activity in nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business and such activities are undertaken in the course of main activities of general public utility. In other words,

such activities are incidental, subservient to primary or dominant activity of general public utility and the measure to verify the same is the aggregate of receipts from such activities which cannot exceed 20% of total receipts of the institution. Therefore, where an institution is carrying out primary or dominant activities in the field of general public utility and in the process of carrying out the same, it also carries out other incidental business activities and the receipt from such business doesn't exceed 20% of total receipts of the institution during the previous year, the institution will still qualify as an institution established for charitable purposes.

At first place, it has been stated that the activities carried out by the applicant council have been reflected in its Income & Expenditure accounts of various years. In the Income & Expenditure accounts for financial years 2015-16, 2016-17, 2017-18, we find that the applicant council has shown receipt of direct income comprising of registration fees, counselling fees, examination fees, Inspection fees, revaluation fees etc and there are corresponding expenditure of councelling charges, examination charges, inspection charges, etc. It has been admitted by the Revenue that such income receipts and expenditure describes its activities which are in the nature of General public Utility (GPU). At the same time, it has been stated (and that where the contradiction has happened) that same income receipts (100%) are of nature of Business/commercial receipts and thus, in contravention of 20% limit as provided in the proviso to section 2(15) and also are not incidental but pre-dominant activities of the institution. How can the same activity qualify and falls in both the categories i.e., an activity in the nature of general public utility and at the same time, qualify as business activity. Merely because the assessee council has charged certain fees as part of rendering its statutory function and to meet its administrative/operative expenses, the same cannot be said to be done for the purpose of profit. In its letter dated 10-4-2019, Government of Rajasthan, Ministry of Medical and Health Department has confirmed that the State Government has only created and subscribed the council and fix the various fees/charges to cover the normal expenditure on operations and development of the amenities/infrastructure to serve the society in better manner, all the revenue collected by the Council are on authorization of the State Government and is to be retained by the Council for meeting the operations and future development expenses. It is not even the case of the Revenue that such activities are carried out for the purposes of profit and the fees so charged are exorbitant and not commensurate with the activities so undertaken by the assessee council. The test of carrying out the activities in the nature of trade, commerce or business is not satisfied in the instant case. As we have held above, the primary or dominant purpose of the assessee council is to regulate the medical profession of registered nurses, midwives, health visitors and auxiliary nurse midwives in the state of Rajasthan and to ensure that these persons have

undergone requisite training and have passed the qualifying examination and hold the necessary degrees/certificates and thus eligible to practice as nurses, midwives, health visitors and auxiliary nurse midwives in their respective domains and services of such persons are thus available to the hospitals, nursing homes and public at large. Where as part of rendering of such activities, it recovers certain nominal fees to meet its operational and administrative expenses, the same will not disqualify it from being involved in activities of general public utility as the Courts have held that the proviso to section 2(15) does not seek to disqualify charitable organization covered by the last limb, when certain reasonable/nominal fee is collected from the beneficiaries in the course of activity which is not a business but clearly charity for which they are established and they undertake. We are therefore of the considered view that once it is held that the whole of the activities are in nature of general public utility and there are no separate business activities and no separate revenue streams from such business activities, the proviso to section 2(15) doesn't apply in the instant case and has been wrongly invoked by the ld CIT(E).

Judgments Relied upon by the Authorities:

a. CIT v. Bar Council of Maharashtra [1981] 130 ITR 28,
b. Bar Council of Rajasthan v. CIT [1984] 147 ITR 720
c. Institute of Chartered Accountants of India v. DGIT (Exemptions) [2012] 347 ITR 99,
d. Bureau of Indian Standards [2012] 27 taxmann.com 127 (Delhi)
e. GS1 India [2013] 38 taxmann.com 364 (Delhi)
f. India Trade Promotion Organization [2015] 53 taxmann.com 404 (Delhi),
g. Jodhpur Development Authority [DB Income-tax Appeal No. 63/12 dated 5-7-2016],

Anil Dev ITA No. 1040 (Bang) of 2018 Bangalore ITAT

Issues discussed and addressed:

Exemption u/s 54F

Facts of the Case:

The appellant has claimed Investment from capital gains to the residential property at 183, Binnamangala, rd Stage, Bangalore and has claimed deduction u/s 54F. However, within one year the appellant has purchased another residential property at 180, NGEF Qtrs. Binnamangala. The claim of the appellant is that the second property though stands in the joint name of the appellant and his wife however it belongs exclusively to his wife. However, the AO has noted that the property has been funded by the appellant from his joint bank account with his wife and thus provisions of Section 54F have been violated.

Held by the Authorities:

For purchasing the property, a person has to pay consideration and if both persons named in the purchase deed says that such consideration is paid in its entirety by any one of them only, then the purchase of property is by that person who paid the consideration in spite of this fact that some ownership rights are created in favour of the other person also, who did not pay the consideration because his name is also included in the purchase deed. For triggering the provisions of the proviso (ii) to section 54F (1), the pre requirement is this that the assessee has purchased one more residential house other than the new asset within one year after the date of transfer of the original asset and this is not enough that some ownership right is acquired by him in such property within such time which has not accrued to him on account of purchase. Hence, it has to be the case that there is such purchase by the assessee and mere acquisition of some right is not enough. In the present case, both persons i.e. the present assessee and his wife Smt. Alka Dev are stating that the purchase is by Smt. Alka Dev, wife of the assessee although in the purchase deed, name of the assessee is also there along with the name of Smt. Alka Dev and purchase consideration of this second residential property is paid by her out of the joint/her individual bank account.

Important updates

a. The Prime Minister of India, Shri Narendra Modi, while launching platform for 'Transparent Taxation – Honoring the Honest' had said that faceless appeal under the Income-tax Act will be available across the country from 25-09-2020 which has been notified now. The Central Board of Direct Taxes (CBDT) has notified the Income-tax authorities which shall exercise the powers and perform functions in order to facilitate the conduct of Faceless Appeal Proceedings. The board has also set up National Faceless Appellate Centre (NFAC) and Regional Faceless Appellate Centres (RFACs) for Faceless Appeal Scheme, 2020.

b. The CBDT has amended Rule 29B to include insurer for making application in Form 15C for grant of certificate to receive, any interest or other sum (other than dividends), without of tax under section 195(1). Earlier only banking company has been prescribed for making such application.

c. In exercise of powers conferred under section 143(2) read with rule 12E, the CBDT has authorised the Assistant Commissioner/Deputy Commissioner of Income-tax (National e-Assessment Centre) having his headquarters at Delhi, as the prescribed Income-tax authority for the purpose issuance of notice under section 143(2) for scrutiny assessment with effect from 13-08-2020.

d. The Finance Minister, Smt. Nirmala Sitharaman has introduced the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 in the Lok Sabha. The bill seeks to amend various sections of the Income-tax Act.

e. The Central Board of Direct Taxes (CBDT) has laid down guidelines for compulsory selection of returns for scrutiny assessment during the Financial Year 2020-21. The guidelines have been prepared keeping in view of Faceless Assessment Scheme & difficulties being faced amid COVID-19 pandemic.

f. The Central Board of Direct Taxes (CBDT) has notified 'L&T Infra Debt Fund (PAN: AACCL4493R)' for the purposes of the section 10(47) of the Income-tax Act, 1961. Exemption shall be available if Infrastructure debt fund shall comply with the provisions of the Income-tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India.