

Important judgements and Updates

Update No 11/2021

Medravathi Agro Farms (P) Ltd ITA Nos. 943 to 956 & 1000 to 1025 (Hyd.) of 2014

Hyderabad ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 45 Gain arising on transfer of agricultural land under JDA acquired with intention to earn agricultural income can be taxed as Capital Gain Only.

Facts of the case with respect to Issue No 1:

Assessee-company incorporated with main object to carry on agricultural activities, purchased agricultural land in 2002 and treated the same as capital asset in its books of account. In 2005, assessee transferred the land to developer in terms of JDA and declared resulting profit as long-term capital gain. AO taxed the same as business income on the ground that transaction was adventure in the nature of trade and land constituted assessee's stock-in-trade.

Held by the Authorities with respect to Issue No 1:

As intention of assessee was to carry on agricultural operations, therefore, events which occurred subsequent to development agreement could not change nature of land into stock-in-trade and therefore, profit arising from transfer of land under JDA was taxable as capital gain and not as business income. AO was directed to compute income of assessee from transfer of land held by assessee-company as capital asset by way of development agreement and subsequent sale of flats and bungalows received as consideration for such transfer which took the character of stock-in-trade on conversion in the manner and as per the method specified above, relying on provisions of section 45(2).

Ackruti Safeguard Systems (P) Ltd ITA No. 6173/Del/2016 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 50 Claim of short-term capital loss on depreciable asset on demolition of building without effecting transfer under section 50(2) was justified.

Facts of the case with respect to Issue No 1:

Assessee purchased a leasehold property with land and building, which were capitalized separately, i.e., the land as long-term investments and the building as a depreciable asset. The building was the only asset in that depreciable block. Since they want to develop the property the said building was demolished and thus, the assessee claimed the written down value of the block of building as a short-term capital loss. AO held that there was no transfer of the said asset but only demolition of building, thus, disallowed the claim of the

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short-term capital loss. On appeal, the CIT(A) upheld the views of the assessee allowing the said short-term capital loss. Aggrieved, revenue went in higher appeal.

Held by the Authorities with respect to Issue No 1:

Commissioner (Appeals) while deciding the issue in favour of the assessee has given a finding that assessee had followed the right method of calculating the short-term capital loss on the building which was demolished during the year and since there was no other asset in the said block, assessee had claimed the WDV of the said asset as short-term capital loss as per the provision of section 50(2) of the Act. No fallacy in the findings of the Commissioner (Appeals) had been pointed out by Revenue nor Revenue had placed any contrary binding decision in its support. Therefore, there was no reason to interfere with the order of Commissioner (Appeals).

Manjula Finance Ltd. ITA No. 3727/Del/2018 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Gift by company Fair market value of shares gifted by company cannot be treated as Sale Consideration. Shares so gifted were held as stock in trade.

Facts of the case with respect to Issue No 1:

Assessee-company engaged in financing of goods, material, movable and immovable properties and also trading in shares, securities, stocks and debentures, gifted shares held as stock-in-trade to 4 different companies. AO took the view that shares were transferred to newly formed companies as a sequel to family realignment and therefore, these gifts could not be held as a valid gift being 'voluntary' and in view of family arrangement. Accordingly, AO held that assessee had deliberately withheld disclosure of value of consideration received by assessee on transfer of the shares, therefore, AO taxed market value of shares as business income of assessee.

Held by the Authorities with respect to Issue No 1:

Gift made by assessee-company could not be said to be a part of a family arrangement as a company could not be a member of a family but a separate juridical entity having its own separate existence. It is an undisputed fact that the assessee being absolute owner of the shares gifted, had full enjoyment rights, including to alienate, discard and even demolish, unless prohibited by some statutory provisions, it was within powers of assessee to make gift at its free-will. Further, shares were credited in books of account of donor. The gift was also authorised by articles of association, approved by Board of Directors and Shareholders. As assessee had gifted the shares and there was no sale of security by assessee, there was not

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any inflow of cash, receivable or other consideration and there was no question of accrual of any consideration to assessee. Accordingly, gift made by a corporate entity, i.e., assessee to 4 different corporate entities, in absence of any consideration, could not be charged to tax in the hands of donor assessee as business income.

Dineshkumar Verma I.T.A. No. 1183/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 68 Addition u/s 68 is not justified when no books are maintained and return of income is filed u/s 44AD.

Facts of the case with respect to Issue No 1:

Assessee challenged addition made by AO under section 68 pleading that assessee filed return of income under section 44AD, i.e., under presumptive tax scheme, and, therefore, assessee was not maintaining books of account.

Held by the Authorities with respect to Issue No 1:

Maintaining books of account is *sine qua non* for making addition under section 68. Since section 44AD does not obligate assessee to maintain books, provisions of section 68 could not be invoked where assessee had filed return of income under provisions of section 44AD without maintaining books of account.

Judgments Relied Upon by the Authorities with respect to issue No 1:

- a. CIT v. Bhaichand N. Gandhi (1983) 141 ITR 67 (Bom.)
- b. Madhu Raitani v. Asstt. CIT (2011) 10 Taxmann.com 206 (Gaw) (TM)
- c. Manasi Mahendra Pitkar v. ITO (2016) 160 ITD 605 (Mum-Trib.)
- d. Kokarre Prabhakara v. ITO, ITA 1239/Bang/2019, DoD 11-9-2020.