

## Important judgements and Updates

Update No 45/ 2021

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### Quepem Urban Co-operative Credit Society Ltd Bombay High Court In favour of Assessee

TANo. 2, 9, 23 & 26 of 2018

#### Issues discussed and addressed:

Issue No 1      Section 80P      AO can't examine whether co-operative society doing business as per its bye-laws to allow Sec. 80P relief

#### Facts of the case with respect to issue No 1:

The Assessee Co-operative credit society engaged in the activity of providing credit facilities to its members and carrying on the business of Banking, had filed its e-return of income for the Assessment Year 2012-13 declaring total income as Nil after claiming deduction under section 80P. Through Assessment Order, passed under section 143(3) of the Act, the Assessment Officer (AO) held that the Assessee is not a co-operative credit society but a Primary Co-operative Bank. As a result, it was declared ineligible for deductions under section 80P(2)(a)(i) and 80P(2)(c)(ii) of the Act.

#### Held by the Authorities with respect to Issue No 1:

Revenue could not go behind registration certificate of co-operative society and examine its activities to determine its true nature; where assessees have been registered as co-operative credit societies, their accepting deposits from non-members does not disqualify them from claiming benefits under section 80P

### Pricewaterhouse Coopers (P.) Ltd. ITA No. 359 (KOL) of 2018 Kolkata ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 37      Payment of Non Compete Fees was independent and not part of cost of acquisition of business paid to shareholders, and hence is allowed as revenue expenditure

Issue No 2      Grant for acquisition of Shares      It is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.

#### Facts of the case with respect to issue No 1:

Assessee company was primarily engaged in activity of providing management consultancy services and also accounting and business advisory services. Assessing Officer passed an order under section 143(3) and made additions on account of disallowance of non-compete fee paid to individuals who had experience in business of consultancy for not to engage themselves in similar kind of business and activities for a period of 3 years.

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### Held by the Authorities with respect to Issue No 1:

It is undisputed fact that the consideration is paid to individuals who had experience in the business of consultancy for not to engage themselves in similar kind of business and activities for a period of 3 years. It is also not disputed that such consideration is independent and not part of the cost of acquisition of business paid to shareholders. It is also an admitted fact that both the Share Transfer Agreement and Non-Compete Agreement are separate agreements with different parties, though entered on the same date. Thus, the payment in question is revenue in character and hence allowable as an expenditure.

### Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. *Hatsun Agro Products Ltd. v. Jt. CIT* [2018] 99 taxmann.com 220/407 ITR 674
- b. *CIT v. Andhra Fules (P.) Ltd.* [2016] 70 taxmann.com 271/240 Taxman 280 (AP)
- c. *Carborandum Universal Ltd. v. Jt. CIT* [2012] 26 taxmann.com 268
- d. *Asianet Communications Ltd. v. CIT* [2018] 96 taxmann.com 399/257 Taxman 473/407 ITR 706
- e. *Eicher Ltd.* [2008] 173 Taxman 251/302 ITR 249

### Facts of the case with respect to issue No 2:

The assessee received an amount of USD 4 million (i.e. Rs. 19,83,20,000) from PwC Services BV, as a non-refundable grant specifically towards utilization in procurement of shares of another private limited company i.e. M/s ECS Limited. Accordingly, upon receipt of the said grant, the same was onward paid in totality for purchase of shares of the ECS Ltd. The assessee claimed that the receipt and the corresponding payment have been made in the capital account (i.e. balance sheet) of the assessee. The value of investment (which was Rs. 29.80 crore in aggregate) has been duly reduced (netted off) to the extent of the aforementioned grant to reflect the actual cost of investment incurred by the Assessee and debited accordingly in its books of accounts in line with the accounting principles prescribed in para 32 of Accounting Standard - 13 on "Accounting for Investments" issued by the ICAI. Since the grant was received as a one-time subvention payment for meeting a capital expenditure, the same was claimed to be a 'capital receipt' not liable to tax. The AO in his order of assessment, held that assessee had business connection with PwC Services BV, Netherlands pursuant to which it had received the sum. Since the said sum that had been received is nothing but benefit arising from the business and hence the same is taxable u/s 28(iv) of the Act.

### Held by the Authorities with respect to Issue No 2:

The instant grant was received for the specific purpose of funding the cost of acquiring the shares of ECS Limited (i.e. to meet a capital expenditure) and such an obligation/purpose for which the grant is given could

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never be delinked from the receipt of the grant, since such obligation is the basic foundation based on which the nature of the grant may be determined.

A grant received for specific purpose i.e., for procuring a capital asset is in the nature of a capital receipt, not subject to tax and this receipt being in cash cannot be taxed u/s 28(iv) of the Act. Hence this ground of the assessee is allowed.

### Judgments Relied upon by the Authorities with respect to Issue No 2:

- a. Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32/255 Taxman 305/404 ITR 1 Supreme Court
- b. Santogen Silk Mills Ltd. [2015] 57 taxmann.com 208/231 Taxman 525 (Bom.)
- c. Xylon Holdings (P.) Ltd. [2012] 26 taxmann.com 333/211 Taxman 108 (Mag.) (Bom.)
- d. Ravinder Singh v. CIT [1993] 71 Taxman 336/[1994] 205 ITR 353 (Delhi)
- e. Dy. CIT v. Tosha International Ltd. [2008] 116 TTJ 941 (Delhi)
- f. CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392
- g. *Sahney Steel and Press Works Ltd. v. CIT* [1997] 94 Taxman 368/228 ITR 253 (SC)

**McCANN Erickson (India) Pvt.Ltd** **ITA No.2252/Del/2016 Delhi ITAT In favour of Assessee**

### Issues discussed and addressed:

Issue No 1      Reassessment u/s 147    Disallowance u/s 40(a)(i) based on retrospective amendment u/s 195 is not justified through reassessment proceedings.

### Facts of the case with respect to issue No 1:

For AY 2008-09, assessee-Company was reassessed and an addition of Rs. 57.38 lacs was made with respect to disallowance of Global Account Co-ordination Cost. Revenue rejected Assessee's contention that withholding tax provisions of section 195 were not applicable in his case which was also dismissed by CIT(A).

### Held by the Authorities with respect to Issue No 1:

ITAT allowing the appeal of the assessee notes that withholding tax obligations are to be discharged at the point of time when payment is made or credited, whichever is earlier, and such obligations can be discharged only in the light of law as it stands that point of time. ITAT further holds that Revenue was not justified in fastening the liability of tax deduction by relying on the amendment made with retrospective effect from April 1, 1962, therefore holds that disallowance u/s 40(a)(i) would not apply.

### Judgments Relied upon by the Authorities with respect to Issue No 2:

Ashapura Minichem Ltd vs ADIT 131 TTJ 291

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- a. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.
- b. In view of difficulties faced by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the new e-filing portal [www.incometax.gov.in](http://www.incometax.gov.in), the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till July 15, 2021.