

Important judgements and Updates

Update No 37/2021

Amit Murlidhar Kamthe ITA No.699/PUN/2016 Pune ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Joint Development Agreement Since no possession was given to the builder and part of the land vested with the State at the material time and weighs in the fact that transaction had fallen through since a part of land was eventually sold to other parties in 2010 and 2013 and shall be charged to tax on substantive basis for AYs 2011-12 and 2014-15

Facts of the case with respect to issue No 1:

Assessee-Individual for AY 2008-09, was found to have entered into two development agreements for certain land with a builder and no capital gain therefrom was declared by the Assessee; Revenue assessed STCG of Rs.3.12 Cr. and LTCG of Rs.2.63 Cr. as per Sec. 53A of the Transfer of Property Act, 1882 (TPA) r.w.s. 2(47)(v) and held that parting with the possession of the land in favour of the builder and receiving a part of the agreed consideration amounted to 'transfer'.

Held by the Authorities with respect to Issue No 1:

ITAT holds that under development agreements, the builder was allowed to enter into the property as a licensee (not owner) and further a part of such piece of land was declared as excess land under the Urban Land (Ceiling & Regulation) Act, 1976 at the material time which was later repealed and led to reversion of land that was acquired by the State Government. ITAT further on the basis of definition of "transfer" u/s 2(47)(v) & Sec. 53A of TPA and remarks that since title to a part of such property itself was disputed and vested with the State Government at the time of entering into the development agreements there was no transfer of possession at the material time.

Max Ventures Investment Holdings (P) Ltd. ITA No. 1603/Del/2017 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 69B Notional interest under section 69B on loan advanced to sister concern is not justified without there being any machinery provision.

Facts of the case with respect to issue No 1:

Revenue was aggrieved by order of CIT(A) deleting addition made on account of notional interest under section 69B on loan advanced to sister concern. It was so held that once genuineness was proved and interest was paid on borrowings, AO could not disallow the deduction either on the ground that the rate of interest was unreasonably higher or that assessee himself charged a lower rate of interest.

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Held by the Authorities with respect to Issue No 1:

It was not the case of AO that loan advanced to sister concern was not recorded in the books of account. It was not also case of AO that interest expenditure claimed as deduction by assessee should have been disallowed under the provision of section 36(1)(iii). Fact remained that AO proceeded to bring to tax notional income without there being any machinery provisions in the Act. Notional income on advances could not be brought to tax in absence of any specific provision of the Act.

Vatsala Asthana ITA No. 5635/Del/2016 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 54F Payment towards purchase of residential house up to the due date of filing of return prescribed u/s 139(4) should be considered for camping deduction u/s 54F.

Facts of the case with respect to issue No 1:

Assessee invested a portion of sale consideration on sale of land for purchase of a residential house. Accordingly, he claimed deduction under section 54F. AO was of the view that payment made for purchase of residential flat before due date of filing of return of income as per section 139(1) would be allowable for considering deduction under section 54F. Assessee contended that the due date of filing of return of income should be reckoned as under section 139(4).

Held by the Authorities with respect to Issue No 1:

In view of various decisions of High Court and Tribunal, the payment made by assessee towards purchase of residential house up to the due date of filing of the return of income prescribed under section 139(4) would be allowable for considering deduction under section 54F. Accordingly, the AO was directed to consider amount utilized by the assessee for purchase of house till due date of filing of return of income prescribed under section 139(4) for deduction under section 54F.

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

- a. Principal CIT v. Shankar Lal Saini ITA No. 153 of 2017: 2018 TaxPub (DT) 0314 (Raj-HC),
- b. CIT v. K. Ramachandra Rao [ITA Nos. 494 & 495 of 2013 & 46 & 47 of 2014, 14-7-2014]: (Karn-HC)
- c. Kishore H. Galaiya, v. ITO ITA No. 7326/Mum/2010: 2012 TaxPub (DT) 2549 (Mum-Trib)