

Important judgements and Updates

Update No 94/ 2021

JR Industries, ITA No. 26/JP/2021 Jaipur ITAT Against Assessee

Issues discussed and addressed:

Issue No 1 Bogus Purchases PCIT was well within his rights to invoke provisions of Section 263 of the Act when the matter still pending before CIT Appeals.

Facts of the case with respect to issue No 1:

Assessee-Company was subjected to reassessment for AY 2011-12 on the basis of information received from Investigation Wing over bogus sales made through accommodation entries which was appealed against before CIT(A). PCIT initiated revisionary proceedings u/s 263 and held that the addition of Rs. 2.95 Lakhs, as against the bogus sale of 11.80 lakhs, by the AO lacked inquiry/verification and thus directed the AO to decide the matter afresh.

Held by the Authorities with respect to Issue No 1:

The power of PCIT u/s 263 extends to such matters which had not been considered and decided in such appeal. The use of the word "considered and decided" leaves no room for doubt that if some issue is decided by CIT(A) in an appeal against the assessment order passed by the AO. Then, that issue cannot be subject matter of proceedings u/s 263 of the Act. Thus, it is evident from the above that the Explanation 1(c) is based on the Doctrine of Merger, according to which there cannot be more than one decree or an operative order governing the same subject-matter at a given point of time.

Thus where an issue in the assessment order has neither been agitated before the Commissioner (Appeals) nor considered by him, in such a scenario that portion of the assessment order will not merge with the order of the Commissioner (Appeals) and therefore, the Commissioner will have the jurisdiction under Section 263 to revise the assessment order with respect to that particular issue.

In another circumstances, if an appeal, against the assessment order passed by the AO, has been filed with the CIT(A) but has not been decided and is pending before CIT(A), then the Doctrine of Merger will even otherwise not apply as there is no order of CIT(A) with which the assessment order could merge and thus, the PCIT will surely have jurisdiction u/s 263 of the Act in respect of all the issues whether contested before CIT(A) or not

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

- a. Kunhayammed v. State of Kerala Supreme Court
- b. CIT v. Shri Arbuda Mills Ltd. [1998] 98 Taxman 457 (SC)
- c. CIT v. Ratilal Bacharilal & Sons[2006] 153 TAXMAN 86 (BOM.)

Important judgements and Updates

Update No 94/ 2021

- d. CIT v. South India Shipping Corporation Ltd. (2000) 111 TAXMAN 58 (MAD.)
- e. Virendra Singh Bhadauriya v. PCIT in ITA No. 255/JP/2020

Attire Designers Pvt. Ltd. ITA No. 5224/Del/2017 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 37 interest paid on the incentive refunded was compensatory and not penal in nature and hence allowed as deduction.

Facts of the case with respect to issue No 1:

Assessee-Company engaged in the business of manufacturing, trading and export of readymade garments was subjected to scrutiny assessment AO observed that DGFT had communicated to the Assessee that it obtained benefit of Rs.1.68 Cr. under 'focus product segment' for the exports shipment effected but since those exports were not having the attributes of technical textile, the amount was recoverable, and on which Assessee paid interest @15% amounting to Rs.93.59 lakhs. During assessment proceedings, Revenue held that Rs. 93.61 lakhs charged by the DGFT was in the nature of penalty, and therefore not allowable in view of explanation to Section 37(1)

Held by the Authorities with respect to Issue No 1:

ITAT held that Revenue did not place any material on record to demonstrate that the payment was hit by Explanation to Section 37, nor did it refer to any contrary binding decision. ITAT, thus, accepted Assessee's submission that interest paid on the incentive refunded was compensatory and not penal in nature and hence allowed as deduction.

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

- a. CIT vs. Enchante Jewellery Ltd [2013] 40 taxmann.com 216 (Delhi)

AB Sciex Pte. Ltd. Sanjay Mehta. ITA No. 515/Del/2021 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 148 The Jurisdictional AO has only passed Assessment Order after transfer of records without issuing valid notice u/s 148 hence the assessment cannot survive.

Facts of the case with respect to issue No 1:

Assessee-Company (AB Sciex Pte Ltd.) was engaged in the business of manufacture and sale of scientific research instruments and peripherals to improve clinical tests, and the products sold by Assessee also

Important judgements and Updates

Update No 94/ 2021

required provision of maintenance services to its customers worldwide, including India; In the course of Section 201 proceedings against one company, Revenue found that Assessee entered into an agreement for provision of annual maintenance service with respect to its products and did not offer the resultant income to tax in India; Thus, Revenue issued a notice u/s 148 on Mar 31, 2019 to which Assessee replied on Apr 18, 2019 whereby Assessee raised an objection that correct jurisdictional Assessing Officer was not ITO, Ward 1(1) International Taxation 1(1), Bangalore, but ACIT International Taxation, Circle 1(1)(1), New Delhi.

Held by the Authorities with respect to Issue No 1:

Reasons were recorded by ITO, Ward 1(1) International Taxation 1(1), Bangalore and notice was also issued by same ITO. ITAT held that merely transferring the records to ACIT International Taxation, Circle 1(1)(1), New Delhi and thereafter issuing notice to the assessee u/s 129 cannot construed as proper implementation of the reopening of the assessment proceedings. The Jurisdictional AO has only passed Assessment Order after transfer of records without issuing valid notice u/s 148 hence the assessment cannot survive.