

Important judgements and Updates

Visalakshi Anandkumar W.P. (MD) No. 5542 of 2012 Madras High Court Against Assessee

Issues discussed and addressed:

Right to Demand Refund – The income assessable to tax, which was not assessed in the relevant year, but, admitted by the assessee on a later date, cannot be said not assessable and it shall be refunded.

Facts of the Case:

The immovable property, transferred by the assessee during the year ended 31st March, 1993 by virtue of Section 2(47)(v) was actually offered to tax in the Assessment year 2002-03 relevant to the previous year 2001-02 in which final sale deed was executed. The AO completed the assessment by making addition to sales consideration. However the Tribunal quashed the addition since transfer, as contemplated in Section 2(47) of the Act had happened in the year ended 31-3-1993, the relevant assessment year 1993-1994 and not in Assessment year 2002-2003.

Thereafter, the assessee filed a petition to the assessing authority for revision of the assessment order with regard to the retention of the capital gains wrongly admitted by the assessee on the ground that voluntary admission is no ground to assess the same, as there is no estoppel in law which was rejected by the assessing authority against which the assessee had filed writ.

Held by the Court:

There is a huge difference between tax planning and tax avoidance. Whenever and wherever law permits to pay lesser tax or no tax, the assessee is entitled to plan for availing such benefits to the extent, the law permits or it is legal. But, not paying the tax taking refuge under one pretext or other, is illegal and no law permits a citizen from sulking away from discharging the duty expected by law. If a person omits to perform the duty cast upon him or evades to pay tax, it is tax avoidance.

Only because, it was not assessed during the relevant year, it will not be the income not assessable to tax. The assessment can be revised within the period of limitation prescribed by law or the assessee can also voluntarily pay the tax on the escaped or omitted to be disclosed. But the income, which is assessable to tax, which was not assessed in the relevant year, but, admitted by the assessee on a later date, cannot be said not assessable and it shall be refunded.

Judgments Relied Upon by the Court:

M/s.McDowell and Company Limited (1985) 3 SCC 230 Shelly Products and Another [(2003) 5 SCC 461],
DSP Vr Employees Association (2003) 128 Taxman 704 (Cal)

Important judgements and Updates

Vijay Kumar Koganti TCA No. 335 of 2020 Madras High Court

Issues discussed and addressed:

Revision u/s 263 – Revision of orders prejudicial to revenue-

Facts of the Case:

The Case was selected for Limited Scrutiny through CASS to consider two issues namely were (i) substantial increase in capital in a year; and (ii) the sale consideration of the property in the income tax return was less than the sale consideration of the property reported in AIR. The Assessing Officer, after verification, completed the assessment and thereafter the PCIT invoked his power under section 263 of the Act on the ground that the assessment order was erroneous and prejudicial to the interest of the Revenue and ultimately set aside the order for fresh assessment after making due verification.

Held by the Court:

Both the issues, which were the basis for exercise of the powers under section 263 of the Act, were, in fact, the issues, which were considered by the Assessing Officer in the limited scrutiny culminating in the order of assessment under section 143(3) of the Act.

The issues raised by the PCIT i.e increase in capital and also conversion of preference shares during the relevant years was duly considered by the AO hence the PCIT could not have invoked the revisionary jurisdiction under section 263 of the Act mainly on the ground that substantial increase in capital investment reflected by the assessee in his balance sheet as compared to the preceding year.

Judgments Relied Upon by the Court:

Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83, (SC)

Ramesh Shroff T.C.A.No.269 of 2020 Madras High Court

Issues discussed and addressed:

Issue No 1 Reopening u/s 147 – Validity of Reopening - Reopening based on change of opinion and in absence of any tangible material is not justified.

Issue No 2 Section 54F –Type of Property vs Use of Property - Use of the residential property for commercial purpose cannot be ground to deny deduction.

Facts of the Case:

Return of income filed by the individual assessee was selected for scrutiny and assessment was completed by accepting the returned income. Thereafter the case was reopened on the ground that gain arising from

Important judgements and Updates

sale of the land was not offered to tax resulting into escapement of income. The argument of the assessee that the concerned lands were agriculture land was not accepted by AO on following grounds;

- a. The property cannot be treated as a rural area property, as the property is situated within the limits of the Corporation of Chennai.
- b. No agricultural income was offered in the earlier return and assessee treated the land as non agricultural,

Even alternate claim of the assessee that he should be given benefit of deduction u/s 54F was also rejected on the ground that the property purchased by the assessee was a residential property which was let out for commercial purpose to run the restaurant and in the return of wealth tax, it was classified as Commercial property.

Thus the AO finalised the assessment order treating the entire sale consideration as Long Term Capital gain on account of failure of assessee to submit the relevant documents.

Held by the Court with respect to validity of reopening:

The reopening being a clear case of 'change of opinion' was treated as invalid on following grounds;

- a. The issue was examined in during the original proceedings and assessee had submitted all details. The notification relied upon by the assessee was very much available at the time of original assessment and hence the AO had no new tangible material to justify reopening.
- b. In the case of assessee's spouse, who was also co-owner of the very same property which was treated as agricultural land and the assessment was completed under section 143(3) of the Act and the said finding remain undisturbed.

Held by the Court with respect to claim u/s 54F:

There are several instances where residential properties are put to use for non-residential purposes and this cannot be a test to decide the nature of the property under the provisions of the Income-tax Act, especially, in assessee's case, where the letting out of the property for non-residential purpose was much after the purchase on 03-2-2011 and the lease agreement was on 21-3-2011. So far as the Wealth-Tax assessment is concerned, it may be true that in the assessment, the property is shown as commercial complex, as on the relevant date, 31-3-2011, the property was leased out for commercial purpose.

Important judgements and Updates

SPR Group Holdings (P.) Ltd ITA No. 16 of 2012 Karnataka High Court

Issues discussed and addressed:

Section 145A - Method of accounting in certain cases - The value of closing stock need not be increased by State excise duty.

Facts of the Case:

The assessee private limited company was engaged in the business of manufacture of Indian Made Foreign Liquor (IMFL). The assessment for Assessment year 1999-00 was completed under section 143(3) of the Act accepting the valuation of the closing stock of the finished goods which did not include the excise duty leviable at the time of their removal from the premises. Subsequently, Commissioner of Income Tax (Appeals) on account of revenue audit of objections ordered revision of the assessment by passing an order under section 263 of the Act directing the Assessing Officer to reframe the assessment after including the value of excise duty on the finished goods in the value of closing stock of finished goods and also apply the provisions of Section 43B of the Act. Consequently the Assessing Officer after complying with the directions, passed an order.

Held by the Court:

Assessee's liability to pay duty on the goods manufactured arises only at the time of removal of the same from its premises, be it distillery, or a warehouse or any other place of storage established or licensed under the Karnataka State Excise Act and not at any time earlier. Till date of clearance of goods, excise duty payable on such goods does not get crystallized and assessee cannot be said to have incurred the excise duty liability. Hence, in respect of the excise goods not being removed, no liability is accrued and there is no question of payment of excise duty.

Judgments Relied Upon by the Court:

1. Polyset Corporation 2000 taxmann.com 925 (SC)
2. Wallace Flour Mills Co. Ltd. [1989] 4 SCC 592 (SC).
3. Maruti Suzuki (India) Ltd. [2020] 114 taxmann.com 129/270 Taxman 75/421/ITR 510.
4. CIT v. Loknete Balasaheb Desai SSK Ltd. [2011] 339 ITR 288 (Bom.),
5. CIT v. Rajasthan State Ganganagar Sugar Mills Ltd. [2017] 88 taxmann.com 522/393 ITR 421 (Raj.),
6. Asstt. CIT v. Narmada Chemature Petrochemicals Ltd. [2010] 194 Taxman 103/327 ITR 369 (Guj.)
7. Asstt. CIT v. D & H Secheron Electrodes (P.) Ltd. [2008] 173 Taxman 188 (MP).

Important judgements and Updates

Uddhav Krishna Bankar ITA Nos. 617 To 620 (Pune) of 2018 Pune ITAT

Issues discussed and addressed:

Section 54B – Exemption u/s.54B(1) is subject to the assessee depositing the amount of unutilized capital gain in a designated bank account within the time provided u/s.139 which includes all sub section of Section 139 including sub section (4)

Facts of the Case:

The assessee had purchased a new agricultural land and claimed exemption u/s 54B which was denied by AO on the ground that the she did not deposit the amount of capital gain in the designated capital gain account maintained with a bank before the due date of filing return u/s.139(1).

Held by the ITAT Pune Bench:

On going through the interplay between sub-sections (1) and (2) of section 54B, it becomes evident that exemption u/s.54B(1) is subject to the assessee depositing the amount of unutilized capital gain in a designated bank account within the time provided u/s.139 which is not to be restricted only to the date specified in Section 139(1) of the Act but would include all sub section of Section 139 including sub section (4) of the Act. As per the facts obtaining in this case, it is observed that the time u/s.139(4) was available up to 31-03-2014. The assessee opened a bank account under the designated Capital gain account scheme on 3-08-2013 and purchased a new property on 26-08-2013. Thus, it is evident that the assessee complied with the requirement of section 54B(2) seen in the light of the time limit as per section 139(4) of the Act.

Judgments Relied Upon by the Court:

1. CIT v. Jagriti Aggarwal [2011] 339 ITR 610 (Punj. & Har.),
2. CIT v. Rajesh Kumar Jalan [2006] 286 ITR 274 (Gau.)
3. Fathima Bai v. ITO [2009] 32 DTR (Kar.) 243
4. Humayun Suleman Merchant v. CCIT [2016] 242 Taxman 189 (Bom.)
5. Venkata Dilip Kumar v. CIT and Another [2019] 419 ITR 298 (Mad.