Investor Financial Education Academy TCA No. 900 of 2018 Madras High Court In favour of Assessee

Issues discussed and addressed:

Section 2(15) – Charitable Purpose –It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to recipients. Merely generation of surplus cannot dis-entitle the assessee for registration under section 12AA of the Act.

Facts of the Case:

The Application for registration u/s 12AA filed by the assessee company 9registered u/s 25 of the Companies Act, 1956) was rejected by the Commissioner of Income-tax (Exemptions) (for brevity "the CIT") on the ground that the assessee's activity of imparting 'financial education/awareness' was a service for price, to the investor in the field of investments; the assessee's activity was designed in such a way that what it received in the form of fee from the client for imparting financial education/awareness was always higher than what was spent for imparting such education/awareness to the said clients. It was further stated that the entire structure was designed to generate surplus/profit and there was no element of charity in the process, rather it was purely on commercial basis amounting to a commercial activity.

Held by the Court:

Relying on the decision in case of M.V.S. Kathirvelu Nadar v. Commissioner of Agricultural Income Tax [1968] 68 ITR 786, it was held that a company registered under section 25 of the Companies Act upon examination of its Memorandum and Articles of Association and a licence being granted mentioning the objects and activities permitted to be carried on by the company, cannot be ignored when the company applies under the Income-tax Act for registration under section 12AA of the Act.

Relying on the decision of the Gujarat High Court in the case of *Gujarat State Cooperative Union* [1992] 195 ITR 279 and *Ahmedabad Management Association* [2014] 47 taxmann.com 162 it was held that tribunal had erred in giving the restrictive meaning to the term 'education'.

The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift of the better in the institutional setup. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow

it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to recipients.

No doubt, under the head "reserves and surplus", the surplus generated has been mentioned. What is important to note is that the said surplus has been retained by the company and not distributed. Essentially this is the basic feature of a registration under section 25 of the Companies Act. Even assuming that there was a surplus, it cannot dis-entitle the assessee for registration under section 12AA of the Act.

Judgments Relied Upon by the Court:

One limb of the Government can not ignore the order or decision taken by other limb of the Government

a. M.V.S. Kathirvelu Nadar v. Commissioner of Agricultural Income Tax [1968] 68 ITR 786

Meaning of Education

a. Ahmedabad Management Association [2014] 47 taxmann.com 162/255 Taxman 223/ (Guj.)
b. Chartered Accountants Study Circle [2012] 23 taxmann.com 444/347 ITR 321 (Mad.)
c. Gujarat State Co-operative Union v. CIT [1992] 195 ITR 279 (Guj.)

Generating Surplus can not be a ground for rejection of Application

a. Queen's Educational Society v. CIT [2015] 55 taxmann.com 255/231 Taxman 286/372 ITR 699 (SC)
b. St. Peter's Education Society [2016] 70 taxmann.com 171/240 Taxman 392/385 ITR 66 (SC)

GMR Industries Ltd ITA No. 390 of 2010 Karnataka High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 36(1)(iii) – Interest - the expenses incurred in expanding share capital would be in capital field and results in expansion of the capital base of the company hence not allowed as deduction being capital expenditure.

Issue No 2 Section 115JB – Prior Period Expense – Not allowed as deduction in calculating boo profit.

Facts of the Case:

The Assessee had claimed deduction with respect to Interest Paid on share application money due to delayed allotment of preference shares which was disallowed by AO as share application money was not a borrowed amount and no debtor-creditor relationship existed. Further AO treated said interest paid for

delay in allotment of shares as brokerage/commission connected with raising of share capital and hence was disallowed.

AO also disallowed the prior period expense debited to Profit and Loss Account while calculating book profit u/s 115JB

Held by the Court with respect to Issue No 1:

When the object of the Assessee is to increase share capital, the expenses incurred in expanding share capital would be in capital field. In the instant case also the assessee with an object to increase share capital has incurred expenses in the form of payment of interest on account of delay in allotment of shares, yet the increase in capital results in expansion of the capital base of the company and may also help in profit making. Therefore, it retains it's character as capital expenditure as the expenditure is directly relatable to expansion of the capital base of the company.

Judgments Relied Upon by the Court:

a. Brooke Bond India Ltd. v. CIT [1997] 225 ITR 798/91 Taxman 26 (SC)
b. G.T.N. Textiles Ltd. v. Dy. CIT [2010] 326 ITR 352 (Ker.)
c. Hindustan Lever Ltd. v. CIT [2017] 88 taxmann.com 534/[2016] 387 ITR 513 (Bom.)

Held by the Court with respect to Issue No 2:

It is pertinent to note that provisions of section 115J or section 115JB of the Act are parimateria. It had further been held that section 115J(1A) of the Act empowers the authority under the Income-tax Act, 1961 to probe into the accounts accepted by the authorities under the companies Act. In the instant case, deletion as sought for by the assessee does not fall within the purview of section 115 JB of the Act. Therefore, the Commissioner of Income-tax (Appeals) and the tribunal were not justified in deducting the addition made on account of prior period expenditure while computing book profits under section 115 JB.

TTK Healthcare TPA (P.) Ltd ITA No. 323 of 2013 Karnataka High Court Against Assessee

Issues discussed and addressed:

Section 194 J - provisions of Section 194J of the Act has to be applied both to the payments which assume the nature of fee for professional services and also on the entire composite payments, when the bill contains charges for various services rendered by the hospital, as such payment or for services rendered as a whole.

Facts of the Case:

Daring the course of survey it was found that the assessee has entered into agreement with various hospitals for extending medical facilities to policy holders of various companies with whom the assessee has entered into agreements to act as an agent. The assessee was making payments on behalf of the insurance company from the float funds available with the assessee, which were provided by the insurance company. The assessee did not deduct TDS on the payments made to the hospital.

Held by the Court:

TDS has to be deducted for all services rendered by a person in the course of carrying on medical profession. Incidental or ancillary services which are connected with carrying on medical profession are included in the term "professional services" for the purpose of section 194J.

Where assessee, a third party administrator (TPA), for medical insurance policies issued by Insurance companies, made payment to a hospital on behalf of insurance company for several other services rendered by hospital such as bed charges, medicines, follow up services, etc., along with medical professional services, assessee was liable to deduct tax at source under section 194J in respect of entire payment including payment made for all these other services

Judgments Relied Upon by the Court:

a. Vipul Medcorp TPA (P.) Ltd. [2011] 14 taxmann.com 13/202 Taxman 463 (Delhi)

Huawei Telecommunications (India) Company (P.) Ltd CWP No. 2698 of 2020

Punjab & Haryana High Court In favour of Assessee

Issues discussed and addressed:

Section 241A – When notice u/s 143(2) has been issued, AO can withhold the refund due to Assessee as per section 143(1) only after with prior approval of PCIT / CIT obtained after recording reasons in writing.

Facts of the Case:

The petitioner engaged in the business of manufacturing and trading of telecom network equipment had filed the returns for the AY 2017-18 and 2018-19 claiming refund of certain amounts which was withheld by AO desoite processed u/s 143(1) as notice u/s 143(2) was issued.

Held by the Court:

Mere pendency of proceedings under section 143(2) is not sufficient to withhold refund under section 241A.

I-Exceed Technology Solutions (P) Ltd. I.T.A. No. 1181/Bang/2018 Bangalore ITAT In favour of Assessee

Issues discussed and addressed:

Section 56(2)(viib) – If assessee determines fair market value in a method as prescribed, AO does not have a choice to dispute the justification.

Facts of the Case:

Assessee-company issued 6,15,088 equity shares of Rs. 10 each at a premium of Rs. 80 per share to six persons. AO proceeded to examine collection of share premium in terms of section 56(2)(viib). Assessee furnished a valuation certificate obtained from a Chartered Accountant in support of the price at which shares were issued. AO noticed that CA had adopted discounted cash flow method (DCF Method) for valuation of shares and valuation had been arrived on the basis of projected figures. Further, it was noticed that details of projected results had been furnished by management only and the basis of projections was also not given. Accordingly, AO rejected DCF method of valuation and held that share valuation had to be arrived on the basis of book value, i.e., Net Asset Value (NAV) method. Accordingly, AO made addition under section 56(2)(viib).

Held by the ITAT:

Law provides assessee two choices of adopting either NAV method or DCF method for valuation of shares. If assessee determines fair market value in a method as prescribed, AO does not have a choice to dispute the justification. At the time of valuing shares actual results of the later years would not be available. What is required for arriving at fair market value by following DCF method are the expected and projected revenues. Accordingly valuation was on the basis of estimates of future income contemplated at the point of time when valuation was made. AO could scrutinize valuation report and he could determine a fresh valuation either by himself or by calling determination from an independent valuer to confront assessee but the basis had to be DCF method and he could not change the method of valuation opted by the assessee.

Judgments Relied Upon by the ITAT:

a. Futura Business Solutions Pvt. Ltd. [ITA No. 3404/Bang/2018],
b. VBHC Value Homes ITA No. 2541/Bang/2019 Order, dated 12-6-2020
c. Vodafore mPesa Ltd. v. Pr. CIT 164 DTR 257, Vodafore mPesa Ltd. v. Pr. CIT 164 DTR 257.

Other Updates

a. The Central Board of Direct Taxes (CBDT), vide circular no. 09/2020 dated 22-04-2020, had issued clarification in form of 55 frequently asked questions (FAQs) on issues related to various provisions of the 'Direct Tax Vivad se Vishwas Act, 2020'. In continuance to earlier circular, the board has issued 34 more FAQs to further provide answers on its scope & eligibility.

b. The Central Board of Direct Taxes (CBDT) has issued circular for deduction of tax at source from salaries. CBDT has explained the obligation of employers with regard to deduction of tax at source from salaries under section 192 of the Income-tax Act, 1961 for the Financial Year 2020-21 in a comprehensive manner.