

Important judgements and Updates

Update No 95/ 2021

Nisha Diamonds (P) Ltd R/Special Civil Application No. 22187 of 2019 Gujarat High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Bogus Purchases Where transaction itself on the basis of the subsequent information was found to be a bogus transaction, mere disclosure of said transaction at the time of original proceedings, could not be said to be a disclosure of true and full facts in the case.

Facts of the case with respect to issue No 1:

AO received information from investigation wing as to assessee having received accommodation entries in the form of bogus purchase. Accordingly, AO issued notice under section 148 after expiry of four years from the end of relevant assessment year so as to reopen assessment. Assessee pleaded no independent application of mind by AO, no failure on part of assessee to disclose fully and truly all material facts and mechanical approval granted by Pr. CIT under section 151.

Held by the Authorities with respect to Issue No 1:

AO, after careful examination of the materials on record, had examined information received from Surat Wing and based on the information, made inquiries to the information and after independent application of mind, and upon due satisfaction, he reached to the conclusion that the alleged transaction with the M/s. Agni Gems (P) Ltd. appeared to be a bogus purchase and it was accommodation entry provided at the instance of Afroze Mohd. Hasanfatta and their group. Therefore, reasons recorded led to belief, to form an opinion by AO regarding escapement of assessment having live-link with conclusion and materials gathered during the inquiry. In view of this, it could be said that after framing of assessment made under section 143(3), tangible material came into the hands of AO through the investigation wing and upon perusal of same, he made independent inquiries and applied his mind and upon due satisfaction, he formed an opinion that income had escaped assessment. Where transaction itself on the basis of the subsequent information was found to be a bogus transaction, mere disclosure of said transaction at the time of original proceedings, could not be said to be a disclosure of true and full facts in the case. Further, while according the sanction under section 151, competent authority had given satisfaction in hand writing and has expressed his satisfaction with regard to reasons recorded and accorded sanction to issue impugned notice. Accordingly, impugned notice was sustained as valid.

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Jay Khodi Yar Engineering ITA No. 1487/Ahd/2015 Ahmedabad ITAT Against Assessee

Issues discussed and addressed:

Issue No 1 Section 40(a)(ia) In order to constitute salary expense, the assessee should demonstrate master and servant relationship between payer (assessee) and payee hence, on non-deduction of TDS, disallowance under section 40(a)(ia) was rightly made.

Facts of the case with respect to issue No 1:

During the scrutiny proceedings the AO examined the accounts of the assessee and noticed that assessee had shown expenditure of Rs. 1,00,000 under the head 'Account charge' paid to G.G. Vekariya, on which no TDS was deducted. In response to notice, the assessee had stated that expenses were in the nature of Accountant's Salary. However, the AO rejected the contention of the assessee and held that salary was not paid on a monthly basis, it was only a single payment in a year at Rs. 1,00,000. Hence, on account of non-deduction of TDS, the above claim of Rs. 1,00,000 was disallowed under section 40(a)(ia). CIT(A) confirmed the addition of AO.

Held by the Authorities with respect to Issue No 1:

Assessee had failed to demonstrate the relationship between payer and payee as a master and servant. The assessee did not file any document/evidence before the Bench, which can show that said payment was on account of accountant's salary. In order to constitute salary expense, the assessee should demonstrate master and servant relationship between payer (assessee) and payee. Considering this factual position, the addition sustained by the CIT(A) was substantiated.

Sambandam Dorairaj ITA No. 301 (Chny) of 2020 Chennai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Cost of Improvement Disallowance based on the inquiries with neighbour is not justified.

Facts of the case with respect to issue No 1:

Assessee had purchased a flat and incurred expenditure of Rs. 23 lakhs for purpose of renovating house. Assessing Officer asked assessee for bills and vouchers for above expenditure incurred by him, however, assessee did not file bills and vouchers and submitted that he had purchased an old flat and he renovated house and incurred above expenditure and submitted that same may be allowed. Assessing Officer deputed an Inspector to make an enquiry about house and to find out if assessee had carried any renovation work or not. Inspector visited house, took photographs and also made enquiry with neighbours who said that they were not aware of improvements done by assessee. On basis of reports submitted by Inspector, Assessing

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Officer concluded that assessee had not carried out any improvement and accordingly, he disallowed entire amount.

Held by the Authorities with respect to Issue No 1:

On appeal, the Ld. CIT(A) was of the opinion that if the A.O wanted to know exactly about the improvement works carried out by the assessee, he should have been enquired through a builder who constructed the building inspite of neighbours. Further, the Ld. CIT(A) keeping in view the above and also by considering all other factors and also take into consideration that the assessee was not residing at Chennai he is only residing at Mumbai, he disallowed an amount of Rs. 5,00,000/- out of Rs 23,00,000/- for lack of evidence.

ITAT confirmed the order of CIT Appeals.