

## Important judgements and Updates

Update No 6/2021

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### Josan Deposits & Advances (P) Ltd. ITA No. 2096/Kol/2017 Kolkata ITAT

#### Issues discussed and addressed:

**Issue No 1**      Section 68      No Addition when No cash is involved

#### Facts of the case with respect to Issue No 1:

Assessee-company issued shares at premium to certain companies in lieu of shares held by said companies. AO made addition of share capital, including premium under section 68.

#### Held by the Authorities with respect to Issue No 1:

Shares at premium were issued by assessee-company to other companies in lieu of shares held by those companies and since no cash was involved in these transactions and transactions were entered into in books of assessee-company by way of journal entries, AO was not, therefore, justified in making addition under section 68.

#### Judgments Relied Upon by the Authorities with respect to issue No 1:

Jatia Investments Co. (1994) 206 ITR 718 (Cal)

### Syed Maqsoodulla ITA No. 397/Bang/2019 Bangalore ITAT

#### Issues discussed and addressed:

**Issue No 1**      Section 68      No Addition can be made u/s 68 since assessee offering income u/s 44AD is not required to maintain books of account.

#### Facts of the case with respect to Issue No 1:

Assessee had a bank account in ICICI Bank and therein total cash of Rs. 48,57,000 was deposited. Assessee stated that he had availed of jewel loan to the extent of Rs. 12,55,616 and same was withdrawn and deposited into his account. However, with respect to the balance of Rs. 36,01,384 assessee could not substantiate either with evidence or through a cash flow statement. AO considered that assessee had no valid explanations to offer regarding cash deposits other than jewel loan and accordingly, balance of Rs. 36,01,384 was treated as unexplained cash credits and brought to tax under the head "Income from other sources" by invoking section 115BBE. CIT(A) enhanced addition by Rs. 13 lakhs. Assessee submitted that he filed return of income and offered income under section 44AD by showing 8% of income on turnover and AO accepted this income declared by assessee.

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### Held by the Authorities with respect to Issue No 1:

The crucial words in section 68 are 'any AO has found any sum credited in books of account of assessee'. When moneys are deposited in bank account, the relationship that is constituted between banker and customer is one of the debtors and creditors, and not of trustee and beneficiary. Applying this principle, the bank statements supplied by bank to its constituent was only a copy of constituent's account in the books maintained by bank. It was not as if the bank statements are maintained by bank as agent of the constituent, nor can it be said that pass book is maintained by bank under the instructions of constituent. Therefore, Bank statements supplied by bank to assessee could not be regarded as a book of assessee's, nor a book maintained by assessee or under his instructions. Further, in terms of section 44AD, there was no necessity of maintaining books of account and production of bills and vouchers and accordingly, addition under section 68 of the amount entered only in bank statements was not justified.

### Creative Trendz (P) Ltd. I.T(SS)A Nos. 272 & 273/Ahd/2016 Ahmedabad ITAT

#### Issues discussed and addressed:

**Issue No 1** Section 153A Assessment completed under section 143(3) cannot be interfered without any incriminating material found during the course of search.

#### Facts of the case with respect to Issue No 1:

The assessee was a company engaged in the business of embroidery of cloth and job work. A search action under section 132 was carried out on 18-2-2014 on the premises of the assessee. The AO finalised the assessment by treating the share capital of Rs. 3.13 crore raised during the assessment year 2009-10 and Rs. 3.57 crore in assessment year 2010-11 as unexplained cash credit. The case of the assessee was that assessment completed under section 143(3) cannot be interfered without any incriminating material found during the course of search.

#### Held by the Authorities with respect to Issue No 1:

Regular assessment for the year under consideration remained unabated as on date of search and, therefore, same could not be interfered with while framing section 153A assessment, in the absence of incriminating material discovered during search.

#### Judgments Relied Upon by the Authorities with respect to issue No 1:

- a. CIT v. Saumya Construction (2016) 81 taxmann.com 292 (Guj) : 2016 TaxPub(DT) 3466 (Guj-HC);
- b. CIT v. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom) : 2016 TaxPub(DT) 3900 (Bom-HC);

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- c. CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 58 taxmann.com 78 (Bom) :
- d. CIT v. Kabul Chawla (2015) 93 CCH 210 (Del) : 2015 TaxPub(DT) 3486 (Del-HC);
- e. CIT v. Meeta Gutgutia (2017) 395 ITR 296 (Del) : 2017 TaxPub(DT) 1767 (Del-HC);
- f. CIT v. Lancy Constructions (2016) 383 ITR 168 (Kar) : 2016 TaxPub(DT) 1207 (Karn-HC);
- g. ACIT v. Ravnet Solutions Pvt. Ltd. (2018) 52 CCH 223 (Del) : 2018 TaxPub(DT) 2330 (Del-Trib);
- h. Garg Brothers Pvt. Ltd. & Ors. v. DCIT & Ors. 52 CCH 334 (Kol);
- i. DCIT v. Pacific Industries Ltd. (2019) 111 taxmann.com 32 (Jodh) : 2019 TaxPub(DT) 4752 (Jod-Trib);
- j. DCIT v. Viren S. Shah, IT(SS)A No. 274-275/Ahd/2016 (Surat).

### **Nikon Systems (P) Ltd. ITA No. 6115/Del/2019 Delhi ITAT**

#### **Issues discussed and addressed:**

**Issue No 1** Merely because goods of assessee were insured against the accident of fire, it could not be said that assessee did not lose goods due to fire and loss of assessee would be compensated in subsequent year later on, at that particular time such insurance claim received would be chargeable to tax under section 41(1) as it is against the traded goods.

#### **Facts of the case with respect to Issue No 1:**

Assessee company was engaged in trading of goods in manufacturing and exports of home furnishing articles along with trading business of mobile phones and electronic goods. Assessee challenged order of CIT(A) confirming action of AO in making disallowance of loss of stock caused due to fire by invoking section 29. Allegation of AO was that stocks of goods were insured against damages by fire, therefore loss was recoverable under a contract of indemnity. According to AO, as claim of assessee was not decided till date by insurance company, therefore, loss claimed by assessee was a contingent loss.

#### **Held by the Authorities with respect to Issue No 1:**

Merely because assessee had insurance, it did not mean that assessee did not incur the loss during year. Moment insurance company determines loss in terms of the insurance policy obtained by the assessee from the insurance company, naturally assessee would be reimbursed or compensated for the same. It does not mean that assessee has not incurred the losses. Accident of fire at the premises of the assessee in which it lost goods due to the fire was one incident. The action of assessee of obtaining the insurance was altogether a different act to mitigate the loss incurred by the assessee. Claim of insurance would also be subject to many conditions. Merely because goods of assessee were insured against the accident of fire, it could not be said that assessee did not lose goods due to fire and loss of assessee would be compensated in subsequent

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year later on, at that particular time such insurance claim received would be chargeable to tax under section 41(1) as it is against the traded goods. Even otherwise, trading loss incurred by assessee was allowable to assessee in the year in which it is incurred.

### Held by the Authorities with respect to Issue No 1:

- a. Motamal Jethumal v. CIT (1947) 15 ITR 155 (Pat)