Dhanender Kumar HUF ITA No. 1591/Chd/2018 Chandigarh ITAT

Issues discussed and addressed:

Interest on Enhanced Compensation

Facts of the Case:

Assessee received Rs. 5,02,43,999 /- interest on enhanced compensation on compulsory acquisition of land under section 28 of the Land Acquisition Act, 1894. The assessing officer had held the same to be taxable under section 56(2)(viii) read with sections 57(iv) and 145A of the Act.

Held by the Authorities:

Interest paid on the excess amount, under section 28 of 1894 Act, depends upon a claim by the person whose land is acquired whereas interest under section 34 is for delay in making payment. Interest under section 28 is a part of enhanced value of land which is not the case in the matter of payment of interest under section 34.

The substitution of section 145A by Finance (No. 2) Act, 2009 was not in connection with the decision of the Hon'ble Supreme Court in Ghanshyam (HUF) 315 ITR 1 (SC) but was brought in to mitigate the hardship caused to the assessee on account of the decision of the Supreme Court in Rama Bai v. CIT, (1990) 181 ITR 400 (SC) whereby it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. Therefore, when one reads the words "interest received on compensation or enhanced compensation" in section 145 A of the Income Tax Act, the same have to be construed in the manner interpreted by the Hon'ble Supreme Court in Ghanshyam (HUF)(Supra).

Judgments Relied upon by the Authorities:

1. CIT v. Ghanshyam (HUF), 315 ITR 1 (SC)
2. Surinder Kumar & Ors. in ITA No. 539 to 543/Chd/2016, ITA No. 673/Chd/2016, ITA No. 547 to 551/Chd/2016, ITA No. 368/Chd/2014, ITA No. 948/Chd/2016 and ITA No. 949/Chd/2016

Vijayrattan Balkrishan Mittal ITA Nos. 3426 to 3429, 3311 to 3314, 3264, 3247, 3265 & 3248/Mum/2019

Issues discussed and addressed:

Issue No 1 : Addition u/s 68 – Penny Stock Issue No 2 : Addition Without Incriminating Material (Search)

Facts of the Case with respect to Issue No 1 :

A search and seizure action under section 132 of the Act was carried out by the Income Tax Department on 3-12-2015 at the resident and office premises of the assessee and its group companies and other associates.

Consequent to the search action under section 132 of the Act, a notice under section 153A of the Act was issued by the assessing officer on 16-1-2017. In response to notice under section 153A of the Act, the assessee filed its return of income on 30-2-2017 declaring a total income of Rs. 47,38,420. The assessment was framed vide Order, dated 22-12-2017 under section 143(3) read with section 153A of the Act on a total income of Rs. 15,10,08,650. The assessing officer made addition under section 68 of the Act amounting to Rs. 14,19,36,826 on account of unexplained cash credit under section 68 of the Act being sale proceed of transactions of sale of shares as bogus. Consequently, the assessing officer also made addition of Rs. 42,58,104 under section 69C of the Act being commission paid on accommodation entries paid by the assessee.

Held by the Authorities with respect to issue No 1 :

The assessee on application for shares was allotted the same at Rs. 10 per share. The company had split the face value of its shares in 2013. Due to this, assessee received 15,00,000 shares against 1,50,000 shares allotted earlier. The assessee acquired the shares on the basis of guidance from his father and friends. The purchase and sale of shares was neither pre-planned nor under any arrangement with the company or any party related to it. The allotment of shares by PAL was made after obtaining prior approval of BSE as per SEBI Issue of Capital and Disclosure Requirements Regulation, 2009. We noted from the facts that as per the financials provided in the assessment order, it can be seen that the company had incurred a loss in F.Y. 11-12 of Rs. 7 lakhs and has earned profit of 16 lakhs in F.Y. 12-13. The fact that PAL was turned from loss making to profit earning itself demonstrates the fact that there was potential in PAL due to which the assessee purchased the shares. Further, the turnover, in the F.Y. 2013-14 increased by 10 times as compared to the preceding previous F.Y. and increase in the net profit after tax was almost around 4 times than that of the net profit recorded in the year of purchase. Moreover, the prices of the company were almost constant for a year. When the assessee thought that the prices had reached its peak, he slowly sold all the shares in a time span of 3 months. To prove the genuineness of the transactions, the assessee provided all the supporting evidences like, share application form, bank statement highlighting the transactions, contract notes, broker's ledger, demat statement Form 10DB, SEBI's final order, SAT Order, etc.

Although after Investigation, SEBI in its final order exonerated the assessee and the alleged exit providers but the assessing officer failed to consider the SEBI final order in the assessment order. It means that the assessing officer and Commissioner (Appeals) also relied on the order of SEBI dated 8-5-2015 mainly for drawing inferences and deciding the issue on the basis of conjunctures and surmises and not on evidences.

Judgments Relied upon by the Authorities:

No Addition Can be made on the basis of Suspicion

a. Omar Salay Mohamed Sait v. CIT (1959) 37 ITR 151 (SC)
b. CIT v. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC)
c. Umacharan Shaw & Bros. v. CIT (1959) (1959) 37 ITR 271 (SC)
d. Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 (SC)

Facts of the Case with respect to Issue No 2:

The Assessing Officer assumed jurisdiction despite the fact that no incriminating material was found during the course of search on 03.12.2015. The assessee filed the return of income for the concerned year on 17-7-2013 which was processed under section 143(1) of the Act. The search and seizure action under section 132 of the Act was conducted 3-12-2015. The notice under section 153A was issued on 16-1-2017 and the return was filed in response thereto on 20-2-2017. Now, the assessee has raised issue that the additions as made by the assessing officer in the assessment as framed under section 143(3) read with section 153A of the Act dated 22-12-2017 without referring to incriminating material found during the course of search are without legal jurisdiction and have to be deleted.

Held by the Authorities with respect to issue No 2:

After hearing both the parties and perusing the facts on record, we observed that undisputably the assessment in the instant year has not abated on the date of search. We further find that the evidences were gathered after issuing notice under section 133(6) that assessee has carried out synchronized trades for obtaining bogus LTCG. In our opinion, the said information/data is collected after the date of search and does not constitute incriminating material found and seized during the course of search. Keeping in view the said facts and circumstances, we are of the considered view that addition to the income of the assessee can only be made on the basis of incriminating record found during the course of search. In the present case, there is no such incriminating material and therefore, the assessing officer has no jurisdiction to make addition in the unabated assessment.

Judgments Relied upon by the Authorities:

Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom)

Bharat Mines And Mineral ITA No. 1989/Bang/2018 Bangalore ITAT

Issues discussed and addressed:

Depreciation

Facts of the Case:

Assessee claimed depreciation on WDV of certain block of asset. AO restricted of claim on the ground that same assets of the concerned block were not used during the relevant year.

Held by the Authorities:

'Used for the purpose of business' as provided in section 32(1) of Income Tax Act for the concept of depreciation on block of assets can be summarized by saying that use of individual asset for the purpose of business can be examined only in the first year when the asset is purchased and in subsequent years, use of block of assets for the purpose of business is satisfied on this finding alone that there is existence of asset in the block of assets. In the present case, this is not the case of the assessing officer that some asset of building block and plant & machinery block are not existing in the respective block of assets. In respect of each of these two blocks, the assessing officer is also allowing depreciation in respect of some assets included in these two blocks. Hence in our considered opinion, part amount of depreciation disallowed by the assessing officer in respect of some asset in each of these two blocks is not justified and it is not as per law.

Judgments Relied upon by the Authorities:

a. CIT & Anr. v. Blend Well Bottles (P) Ltd. (2010) 323 ITR 18 (Karn)
b. CIT v. Southern Hydro Carbon Ltd. (1998) 146 CTR 55 (Mad)
c. Bharat Aluminium Co. Ltd. v. CIT, (2010) 187 Taxman 111 (Delhi-HC)
d. Swati Synthetics Ltd. v. ITO, (2010) 38 SOT 0208 (Mumbai-Trib.)

S.P.S. Ahluwalia I.T.A. Nos. 2429 to 2432/Del/2012 Delhi ITAT

Issues discussed and addressed:

Validity of Proceedings

Facts of the Case:

Search and seizure operation were conducted at the premises of the assessee under section 132(1) of the Act on 16-12-2003. The proceedings under section 153A of the Act were initiated against the assessee, as

per the assessment order, for which Notice, dated 7-3-2006 was issued to the assessee. The learned AR for the assessee has produced the aforesaid notice issued to the assessee and pointed out that the said notice was not issued under section 153A of the Act but was issued under section 153A read with section 153C of the Act.

Held by the Authorities:

The initiation of the proceedings thus are under section 153C of the Act, i.e., in respect of person other than the person searched, which is not the case. The assessee is the person searched and requirement of law is to issue the notice under section 153A of the Act. Though in the assessment order, the assessing officer mentions that the notice had been issued under section 153A of the Act on 7-3-2006, but infact the notice which is issued on 7-3-2006 was the notice under section 153A read with section 153C of the Act. The said notices were invalid and the consequent assessment framed under section 153A of the Act suffers from infirmity, because of lack of jurisdiction invoked by the assessing officer under section 153A of the Act. Consequently, the assessment orders framed in the case are bad in law and we hold so.

Other Important updates

a. The Central Board of Direct Taxes (CBDT) has revised the 'E-assessment Scheme, 2019' notified on September 12, 2019. Now, e-assessment scheme shall be called Faceless Assessment. Now, the National e-Assessment Centre shall intimate the assessee for conduct of faceless assessment in case wherein notice has been issued by AO. The Board has also extended its scope to cover best judgment assessments.

b. The Prime Minister of India, Shri Narendra Modi has launched platform for 'Transparent Taxation – Honoring the Honest' to carry forward the journey of direct tax reforms. The PM has unveiled Faceless assessments, Faceless appeals & Taxpayers Charter. The event has been witnessed by various Chambers of Commerce, Trade Associations, Chartered Accountant's associations and also eminent taxpayers, apart from the officers and officials of Income-tax Department.

c. The Central Board of Direct Taxes (CBDT) has directed that all the assessment shall be passed by the National e-Assessment Centre through the Faceless Assessment Scheme, 2019. However, the board

has provided two exception as well. Assessment orders in cases assigned to Central Charges & International Tax Charges.

d. Jurisdiction of income-tax authorities have been defined under section 120 of the Income-tax Act, 1961. Following the implementation of faceless assessment to all taxpayer as announced by the PM Shri Narendra Modi, the Central Board of Direct Taxes (CBDT) has amended jurisdiction of various designation of the Income-tax Authorities.