

## Important judgements and Updates

Update No 35/2021

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### Dr.Jwalit H. Sheth ITA No.1856/AHD/2018 Ahmedabad ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Principle of Natural Justice      Order passed without offering opportunity to cross verify based on which addition was made deserves to be quashed.

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

Addition for undisclosed investment u/s 69B was made in the case of assessee based on statements of the directors of C Limited recorded u/s 132(4). The case of the assessee was that he was not supplied the statement despite specific request.

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

The statements of the directors of C Limited based on which the additions were made by the AO were not provided to the assessee for the rebuttal despite specific request. The principles of natural justice requires that the assessee should be given the opportunity of placing his points of contentions with respect to search materials and the statements based on which additions were made. Hence no addition can be sustained in the hands of the assessee.

#### Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. Heirs and Legal Representative of Late Laxmibhai S Patel vs. CIT reported in [2010] 327 ITR 290
- b. HR Mehta vs. ACIT reported in [2016] 387 ITR 561 [Bom]

### Kaushal Devendra Doshi ITA. No: 672/Ahd/2016 Ahmedabad ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 147      Reassessment proceeding cannot be initiated merely on basis of audit objection, where Assessing Officer has no subjective satisfaction.

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

The case of the assessee was reopened based on audit objection by the Department that as per TDS Certificate submitted gross earning u/s. 194C is Rs. 1,35,35,859/- whereas amount declared in profit & loss account is that Rs. 6,34,208/- meaning thereby that assessee has shown less income.

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

A.O. made reassessment on the basis of audit objection. A.O. should have formed independent opinion and copy of the said opinion should have been given to the assessee. As that exercise was not carried out by the

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Assessing Officer and merely on the basis of audit objection by the Departmental Officer in reassessment proceedings addition were made which is not tenable in the eyes of law.

### Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. Shree Ram Builders vs. ACIT [2017] 81 taxmann.com 103 (Gujarat),
- b. CIT vs. Shilp Gravures Ltd. [2013] 40 taxmann.com 309 (Gujarat)
- c. Vodafone West Ltd. vs. ACIT [2013] 37 taxmann.com 158 (Gujarat)

### Smt. Nalini Anil Amin ITA No. 846/AHD/2018 Ahmedabad ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No. 1      Section 147      When on ground on which the reopening of assessment was based, no addition were made by Assessing Officer in the order of assessment, he could not make additions on some other grounds which did not form part of reasons recorded by him

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

The proceedings under section 147 of the Act were initiated by the AO on account of escapement of income of the capital gain generated on the sale of the property. However, the AO has made the addition under the provisions of section 56(2)(vii) of the Act on account of the money received by the assessee amounting to Rs. 40 lakh from the company namely M/s M Ltd.

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

The basic premise on which the satisfaction was recorded by the AO for initiating the proceedings under section 147 of the Act i.e. escapement of income on account of sale of the property does not survive. Once the basic foundation goes, then there cannot be any addition on account of any other income which has come to the notice of the AO during the proceedings under section 147 of the Act.

#### Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. Mohmed Juned Dadani reported in 355 ITR 172 Gujarat High Court