DIRECT-TAX INSIGHTS

25th December,2021

Important judgements and Updates

Update No 100/ 2021

Gopal Heritage (P.) Ltd R/Tax Appeal No. 243 of 2021 Gujarat High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 — Section 68 — Once the appellant duly discharges the primary onus cast upon it by making available the details and copies of supporting documents in the form of conformation, copy of bank account and return of income, it is for the Assessing Officer then to make further inquires through issuing summons and notices under section 133(6) to the depositors for further verification, which in the instant case, has not been done and for which the appellant could not be held responsible.

Facts of the case with respect to issue No 1:

AO observed that assessee had taken unsecured loans of the said amount from the following persons: - (1) Mit G. Shah - Rs. 5,75,000/-, (2) Sejal Shah - Rs. 67,30,000/-, (3) Shaan Leisure Ltd. - Rs. 1,07,05,000/-, (4) GSM Infra Projects Ltd. -Rs. 92,60,000/-, (5) Yuva Sports Academy Pvt. Ltd. - Rs. 5,00,000/-, and (6) Manibhadra Tradelink Pvt. Ltd. - Rs. 1,25,64,000/-. The AO directed to submit the identity of the creditors, their creditworthiness and genuineness of the transactions and since when he disbelieved the creditworthiness of the creditors, he made the additions.

Held by the Authorities with respect to Issue No 1:

Identity of the depositors had been proved as they had filed the return of income along with the PAN. Moreover, loans have been granted through banking channels and in respect of the same copy of the bank statement also has been provided and hence, genuineness also has been believed by the CIT(Appeals) and further the return of income had been filed by the said depositors and hence, the creditworthiness also has been proved. The appellant provided a copy of audited balance sheet and profit and loss account for the year under consideration in respect of depositors to the Assessing Officer and after verification, the Assessing Officer has the only objection that the company was not having fresh funds in its books of accounts and negligible operational income was derived.

Once the appellant duly discharges the primary onus cast upon it by making available the details and copies of supporting documents in the form of conformation, copy of bank account and return of income, it is for the Assessing Officer then to make further inquires through issuing summons and notices under section 133(6) to the depositors for further verification, which in the instant case, has not been done and for which the appellant could not be held responsible.

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

a. CIT v. Orissa Corpn. (P.) Ltd . [1986] 25 Taxman 80F/159 ITR 78

Minimax Commerce (P.) Ltd. ITA No. 20 (RPR) of 2021 Raipur ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 263 Section 263 revision against Assessment Order which was passed on basis of an invalid notice u/s 143(2) is bad in law.

Facts of the case with respect to issue No 1:

The assessment order was passed under section 143(3) of the Act by the AO Assessing Officer stationed at Raipur [ACIT, Circle 2(1), Raipur] whereby the return of income filed by the assessee showing loss of Rs. (-) 98,81,342/- was assessed without any adjustments. Thereafter, in exercise of powers conferred under section 263 of the Act, the case records of the assessment so made were called by the Revisional Commissioner (PCIT), Raipur-1. The PCIT observed that the impugned assessment order is erroneous insofar as it is prejudicial to the interest of the revenue.

Held by the Authorities with respect to Issue No 1:

An order under section 127(2)(a) dated 13-9-2013 was passed by the CIT, Kolkata-II, Kolkata whereby the jurisdiction over the assessee was transferred from the ITO, Ward (4)(2), Kolkata to ACIT, Central Circle, Raipur. It was further noted at the bottom of the aforesaid transfer order that the order shall take immediate effect. Hence, in view of the aforesaid transfer order, the Assessing Officer at Kolkata was ousted of its jurisdiction and consequently had no locus over the assessee from the date of aforesaid transfer order. The AO at Kolkata was fully aware of this fact, as can be seen from his action, in respect of assessment year 2014-15. As pointed out on behalf of assessee, the proceedings under section 143(2) were dropped by AO, Kolkata for AY 2014-15 when he was apprised of the fact of transfer of jurisdiction. The facts, in the instant case, are thus speaking for itself. It is not in dispute that the AO, Kolkata at the relevant time of issuance of notice under section 143(2) dated 9-8-2018 completely lacked jurisdiction over assessee to do so.

On a combined reading of sections 120(1), 120 (2), 124(1), rule 12E of the IT Rules, 1962 and transfer order passed by CIT under section 127 of the Act, it was held that there was no valid jurisdiction available whatsoever with the Assessing Officer, Kolkata in the instant case. The notice issued under section 143(2) of the Act by such officer is thus wholly without jurisdiction and thus a *non est* notice.

The assessment has been admittedly framed based on such *non est* notice without taking any corrective step in this direction. The AO at Raipur has not issued any separate notice under section 143(2) to assume power to assess the income of the assessee. He has merely continued his action based on a *non est* notice issued by the AO of a different jurisdiction. The assessment order passed on the basis of an invalid and *non est* notice thus cannot be countenanced in law. Consequently, the revisional action under section 263 is not permissible in law.

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

a. Supersonic Technologies (P.) Ltd. v. Pr. CIT [IT Appeal No. 2269 (Delhi) of 2017, dated 10-12-2018]

Interworld Shipping Agency LLC ITA No. 7805/Mum/19 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1	Residential Status	As there was reasonable material on record to substantiate stand of assessee that assessee company was incorporated in UAE, and was managed and controlled wholly in UAE, therefore, assessee company was a resident of UAE, in terms of requirements of article 4(1)(b) of Indo-UAE DTAA.

Facts of the case with respect to issue No 1:

Assessee, based at UAE, was engaged in the business of services like ship chartering, freight forwarding, sea cargo services, shipping line agents, chartered the ships for use in transportation of goods and containers in international waters, including to Kandla and Mundra ports as indeed other ports in India and elsewhere. During the relevant previous year, assessee received Rs. 64,41,25,715 on account of total freight collection, including prepaid collections, which, under section 44B read with section 172, resulted in a taxable income, computed @ 7.5%, of Rs. 4,83,09,429. Assessee, however, claimed that as it was a tax resident of UAE and as, under Indo-UAE DTAA [(1995) 205 ITR (ST) 49] profits derived by an enterprise of a UAE or India from operation by that enterprise of ships in international traffic would be taxable only in the respective jurisdiction, the assessee was not to pay any tax in India. The relief was thus sought under section 90 read with Indo-UAE. DTAA. AO held that assessee company not wholly managed or controlled from the UAE, was not entitled to the benefits of Indo-UAE. DTAA.

Held by the Authorities with respect to Issue No 1:

Assessee company had its office in UAE, it was in business there since 2000, it had expatriate emloyees who were given a work permit to work in UAE for assessee company, the main driving force of the company and

its director was an expatriate resident in UAE. Therefore, inferences drawn by AO were unsustainable in law, as there was reasonable material on record to substantiate stand of assessee that assessee company was incorporated in UAE, and was managed and controlled wholly in UAE. Accordingly, assessee company was a resident of UAE, in terms of requirements of article 4(1)(b) of Indo-UAE DTAA and, that the limitation on benefits of provisions of article 29 of Indo-UAE DTAA could not be pressed into service and that assessee was eligible for tax treaty protection, in respect of its income earned in India, under Indo-UAE DTAA. AO was directed accordingly.

Hothur Traders ITA No. 541/Bang/2019 Bangalore ITAT Against Assessee

Issues discussed and addressed:

Issue No 1	Section 41	Though amount received originally was not of income nature, the amount remained with assessee for a long period unclaimed by the third parties, i.e., ILC Industries Limited and become definite trade surplus and was, therefore, to be treated as taxable income under section 41(1).

Facts of the case with respect to issue No 1:

Assessee received a sum of Rs. 10 crores from M/s. ILC Industries Limited as advance for supply of iron ore fines during the financial year 2009-10. Assessee had also paid an advance amount of Rs. 5.60 crores on 9-9-2010 to said party for supply of 'C' ore. The said M/s. ILC industries Limited did not take delivery of the goods contracted on account of fluctuation in the prices between the contract date and date of delivery. There was considerable price drop and the said party insisted to take delivery only if the goods are sold at the lower prices. In view of this dispute, transaction did not materialise and assessee, therefore, adjusted said amount of Rs. 5.60 crores against amount of Rs. 10 crores received from M/s. ILC Industries Limited. The ledger account of the said party accordingly showed an amount of Rs. 4,17,71,395 as credit balance. AO taxed the same under section 41(1).

Held by the Authorities with respect to Issue No 1:

Assessee had received the amount in the course of its business, which was originally treated as an advance. These deposits were neither claimed nor returned to the party concerned. There was no dispute that impugned amount was received in the normal course of business of assessee, the amount was written off by other party, who had given this to assessee and there was no necessity of fulfilment of contract which was originally entered by assessee as ILC Industries Limited had written it off. Though amount received originally was not of income nature, the amount remained with assessee for a long period unclaimed by the third

parties, i.e., ILC Industries Limited and become definite trade surplus and was, therefore, to be treated as taxable income under section 41(1).

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

a. West Asia Exports & Imports (P) Ltd. v. Asstt. CIT, 104 Taxmann.com 170 (Mad-HC
b. Gujtron Electronics (P) Ltd. v. ITO 83 Taxmann.com 389 (Guj-HC)
c. Suresh Kumar Jain v. ITO, (2011) 128 ITD 74 (Bang)