Karur Vysya Bank Ltd Tax Case Appeal No.739 Of 2019 Madras High Court

Issues discussed and addressed:

Taxability of Interest Income

Facts of the Case:

The assessee, which is a bank, filed its return of income for the assessment year under consideration namely AY 2003-04 on 27-11-2003 declaring a total income of Rs. 1,51,41,88,620/-. The Assessing Officer held that the assessee excluded the income received in advance from the taxable income claiming that the same was interest received in advance, which need not be assessed in the relevant year on account of the fact that it was following mercantile system of accounting. The Assessing Officer, though accepted that the amount represented interest pertaining to a subsequent year, however, held that the same was received during the year under consideration. Therefore, the Assessing Officer referred to Section 5(1)(a) of the Act and held that the assessee received income during the year under consideration and that the same should be included in the total income of the year under consideration.

Held by the Authorities:

The Tribunal proceeded solely on the basis that the receipt of income/interest on purchase and discount may not be required to be repaid by the assessee at any point of time and that in other words, there was no liability for the assessee for payment in the subsequent year or at any point of time. Further, going by the contentions raised by the Department, the Tribunal held that the assessee physically received the amount towards income in advance and there was no liability for repayment. The Tribunal was of the opinion that the same had to be treated as income of the assessee and that the matter would stand differently in case there was liability for repayment of money received in advance.

In our considered view, the observation made by the Tribunal that the interest received on purchase and discount may not be required to be repaid by the assessee at any point of time is a finding, which is not borne out by facts. As argued before us by Mr. R. Parthasarathy, learned counsel for the assessee, if the bills are discounted, normally the period of repayment is 90 days and in the event the bill gets honoured within a period of 90 days, it goes without saying that for the differential period, proportionate interest has to be refunded. Thus, the Tribunal is not justified in coming to the conclusion that the interest on purchase and discount of bills may not be required to be repaid by the assessee at any point of time.

On going through the orders passed by the Assessing Officer, the CIT(A) and the Tribunal, what is conspicuously absent is the matter pertaining to the accounting system followed by the assessee bank. This,

in our considered view, would be very relevant because the assessee was following mercantile system of accounting.

Therefore, to bring the receipt of interest by the assessee to be profit as mentioned in Sub-Section 2(24) of the Act, it is necessary that it should be computed in accordance with the method of accounting regularly employed by the assessee and in the instant case, it is mercantile system of accounting.

It cannot be disputed that discounting of bills is being done in one of the modes of finance and the Assessing Officer accepted that the assessee received the amount of interest, which represented interest pertaining to a subsequent year. In such cases, if the assessee is not permitted to debit interest related to the period beyond the closing date from the interest received account and credited in the advance account, then it would fall foul of the mercantile system of accounting. This concept has been clearly brought out in the decision of the Mumbai Tribunal in the case of Siam Commercial Bank PCL, which we quote with approval.

Judgments Relied Upon by the Authorities:

a. Siam Commercial BankPCL v. DDIT, International Taxation [2011] 15 taxmann.com 353
b. DCIT v. Jetu J.T. Lalwani [2007] 15 SOT 322.

Ramesh Exports (P.) Ltd IT Appeal Nos.2146 & 2206 (Bang) Of 2017 Bangalore ITAT

Issues discussed and addressed:

Issue No 1 Addition of Interest to the value of Inventory

Issue No 2 Disallowance u/s 37(1)

Facts of the Case with respect to Issue No 1:

The first issue involved is regarding disallowance of interest to the tune of Rs. 92,82,222/-. He submitted that disallowance was made by the AO and confirmed by learned CIT(A) on this basis that in valuation of the inventory, the assessee should have taken into consideration the interest attributable to bringing the inventory to its present location and condition in accordance with explanation to section 145A(A) of the Income-tax Act, 1961.

Held by the Authorities with respect to Issue No 1:

As per Section 145A, it is seen that it is provided therein that valuation of inventory should be in accordance with the method of accounting regularly employed by the assessee and is to be further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation and as per the

explanation it is provided that for this purpose, any tax, duty, shares or fee by whatever name called under any law for the time being in force and it shall include all such payments notwithstanding any right arising as a consequence to such payment. Hence, it is seen that there is no such provision in this section to include interest cost in the value of inventory.

Judgments Relied Upon by the Authorities:

DLF Ltd. v. Addl. CIT [2019] 106 taxmann.com 294 (Delhi - Trib)

Facts of the Case with respect to Issue No 2:

The dispute is about disallowance of Rs. 1,11,77,323/- and it was submitted by her that this disallowance was made by the AO on this basis that the AO issued notices to verify these transactions under section 133(6) of the Act and these notices were sent by the AO by Speed Post Acknowledgement Due (SPAD) to the 10 entities out of 28 entities on a Test Check Basis but these notices has been returned unserved and therefore, it was held by the AO that these transactions were not genuine and he disallowed the entire amount of such claim.

Held by the Authorities with respect to Issue No 2:

At this juncture, the Bench wanted to see the quantitative reconciliation between the quantity of opening stock + purchase during the year with total of closing stock and sales during the year and the Bench observed that if these two quantities are tallied and the difference if any in these two quantities are explained/reconciled, then the entire amount of purchase cannot be said to be bogus and at the worst, it will be a case of inflating the purchase price for which the AO can make necessary enquiry to find out the normal purchase pricing of the same material in the relevant time. In reply, it was submitted by learned AR of the assessee that this exercise was not done and therefore, the matter may be restored to the file of the AO.

in view of the above discussion, we set aside the order of CIT(A) on this issue and restore this matter back to the file of AO for a fresh decision with the direction that the assessee should furnish the comparison of quantity of opening stock + purchase and closing stock + sales and if there is no difference in such two quantities and difference, if any is explained/reconciled then quantity of purchase should be accepted and in case of unexplained difference in such two quantities, only such unexplained difference in quantity should held to be bogus claim.

Karnataka State Industrial Infrastructure Development Corporation Ltd

ITA Nos. 1074 & 1334 (BANG.) Of 2017 Bangalore ITAT

Issues discussed and addressed:

Disallowance u/s 40A(9)

Facts of the Case:

It was submitted by learned AR of the assessee that the disallowance was made by the AO by invoking the provisions of sub-section 9 of section 40A of the Income-tax Act, 1961 (hereinafter called 'the Act') but in the present case, this is not applicable because as per sub-section 9 of section 40A, disallowance can be made in respect of sum paid by the assessee as an employer towards the set up or formation of or as contribution to any fund, trust, company, AOP, POI, Society registered under the Societies Act, 1860, or other institution for any purpose except where such sum is so paid for the purposes to the extent provided by or under clause IV or clause IVA or clause V of sub-section 1 of section 36 or as required by or under any other law for the time being in force. He submitted that in the present case, the amount in dispute of Rs. 2,75,000/- was paid to two concerns viz., Geleyara Balaga and SC/ST Welfare Association for the purpose of festival celebration and general welfare of its employees.

Held by the Authorities:

We have considered the rival submissions and we find that the amount in question was paid for the welfare of the employees of the assessee and not as contribution to any fund, trust, etc., and therefore, in our humble understanding, provisions of sub-section 9 of section 40A are not applicable in the present case and the amount in question is allowable under section 37 and accordingly, this disallowance is deleted and this ground is allowed.

Radha Kishan Kungwani ITA No. 1106 (JP) OF 2018 Jaipur ITAT

Issues discussed and addressed:

Addition u/s section 56(2)(b)

Facts of the Case:

The assessee is proprietor of M/s Mahendra Gulkand Works and filed his return of income on 29/09/2015 declaring total income of Rs. 7,08,230/-. During the scrutiny assessment, the A.O. noted that the assessee has purchased a Flat No. 3105, E-Wing, Whispering Tower, LBS Marg, Mulund (W), Mumbai for a consideration of Rs. 1,38,03,550/- on 17/09/2014 whereas the Sub-Registrar, Mumbai has determined the market value for the purpose of stamp duty at Rs. 1,53,43,036/-. Accordingly, the A.O. proposed to invoke

provisions of section 56(2)(b) to make the addition of the differential amount between the same consideration shown in the sale documents and stamp duty valuation taken by the Sub-Registrar. The assessee has explained that the flat was booked by the assessee on 10/10/2010 and an amount of Rs. 12,38,090/- was paid as earnest money at the time of booking of the said flat.

Though, the A.O. has not disputed the payment made by the assessee on 10/10/2010 and 14/10/2010, however, the A.O. has denied this claim of the assessee and taking fair market value of the flat as on the date of booking in view of provisions of Section 43-CA of the Act on the ground that the assessee has not produced any agreement prior to the sale agreement registered on 17/09/2014. The A.O. accordingly, made an addition of Rs. 15,39,496/- being the difference between the stamp duty valuation and the sale consideration shown by the assessee.

Held by the Authorities:

The assessee has claimed that the assessee booked this flat on 06/09/2010 and made advance payment of Rs. 2,51,000/- on 10/10/2010 and Rs. 9,87,090/-on 14/10/2010 total amounting to Rs. 12,38,090/-. The A.O. has not disputed these payments made by the assessee vide two cheques dated 10/10/2010 and 14/10/2010. The only dispute is regarding whether the stamp duty valuation has to be taken as on the date of booking of the flat and part payment made by the assessee or at the time of final registration of the purchased document. The assessee produced confirmation of the builder regarding the payments received at the time of booking of flat of Rs. 2,51,000/- and Rs. 9,87,090/- through cheques. Vide letter dated 16/10/2017, the builder has specifically confirmed that the cost of flat is Rs. 1,38,03,550/- and the booking was done by payment of Rs. 2,51,000/- by cheque dated 10/10/2010 drawn on Andhra Bank. This fact is otherwise not disputed by the A.O. We further note that even in the final agreement which is registered on 16/09/2014, the payment schedule is given which is as per the various stages of completion of project, therefore, the parties at the time of booking, agreed for the payment as it is part of the agreement registered on 16/09/2014. All these facts and undisputed part payment made by the assessee through cheques on 10/10/2010 and 14/10/2010 clearly established that at the time of booking, there was an agreement between the parties regarding the purchase and sale of the flat in question and payment of the purchase consideration as per the agreed schedule between the parties. Thus, even if there is no separate agreement between the parties in writing but the agreement which is registered itself shows that the terms and conditions as contained in the said agreement were agreed between the parties at the time of booking of the flat. Hence, in our considered opinion that there was an agreement between the parties regarding purchase and sale of flat in question at the time of booking of the said flat and part payment made by the

assessee on 10/10/2010 through cheque and there is subsequent payment on 14/10/2010 through cheque. Thus, the booking of the flat and part payment by the assessee constitute agreement between the parties as the terms and conditions which are reduced in writing in the agreement registered on 16/09/2014 relates to the performance of both the parties right from the beginning i.e. date of booking of the flat.

Thus, as per clause (b) of sub-section (2)(vii), if the assessee has received immovable property for a consideration which is less than the stamp duty value, the value of such property as exceeds such consideration shall be chargeable to income tax under the head income from other sources. However, the first and second proviso carve out the exception for taking stamp duty value on the date of agreement prior to the date of registration if an amount of consideration or part thereof has been paid by any mode other than the cash before the date of agreement for transfer of such immovable property. Therefore, if there is an agreement between the parties, fixing the amount of consideration for transfer of immovable property prior to the date of registration and the purchaser has made the payment of consideration or part thereof before the date of that registered agreement for transfer by any mode other than cash then the value as determined for the stamp duty will be taken on the date of such earlier agreement. In the case in hand, all these facts are duly acknowledged by the parties in the registered agreement that earlier there was a booking of flat and the assessee paid part payment of consideration. Hence, the proviso first and second to section 56(2)(vii) of the Act would be applicable in the case and the stamp duty valuation or the fair market value of the immovable property shall be considered as on the date of booking and payment made by the assessee towards booking of the flat. Accordingly, the orders of the authorities below are set aside and the matter is remanded to the record of the A.O. to apply the stamp duty valuation as on 10/10/2010 when the assessee booked the flat.

Raghuveer Metal Industries Ltd ITA Nos. 555 & 556 (JP) of 2016 Jaipur ITAT

Issues discussed and addressed:

Addition based on findings by Excise Department during search operation

Facts of the Case:

The assessee is engaged in manufacturing and trading of TMT bars. During the course of assessment proceedings, it came to the knowledge of the Assessing officer that the assessee company was indulged in evasion of Central Excise duty by resorting to clandestine manufacture and clearance of finish goods. DGCEI conducted search operations at the assessee's factory premises and other premises of its associates. During the course of search, certain incriminating documents and assets were recovered and physical verification of

finished goods and raw material was also conducted which resulted in detection of various discrepancies. Statement of Shri Sunil Khurana, Director of the assessee company was also recorded. Thereafter, Additional Director General, DGCEI, Delhi Zone issued a show cause notice to the assessee on 11-3-2011 and 25-11-2011. Thereafter, Commissioner Central Excise, Jaipur adjudicated the case of the assessee and held that the assessee was indulged in evasion of Central Excise duty by resorting to clandestine manufacture and clearance of finished goods. As per show cause notice dated 25-11-2011 of DGCEI, the assessee has removed goods from his factory premises worth Rs. 23,21,52,189/- during the period 24-2-2009 to 26-2-2010 and for Rs. 17,88,40,952/- during the period 27-2-2010 to 31-8-2011. Basis said information in possession of the Assessing officer, during the course of assessment proceedings, an exercise was carried out to identify the quantum of clandestine removal of goods during the period 1-4-2009 to 31-3-2010 which worked out to 4585.145 MT valued at Rs. 15,13,68,615/- and accordingly, a show cause was issued as to why the amount of Rs. 15,13,68,615/- should not be added to the assessee's income for A.Y. 2010-11 being the unrecorded sales made out of books. In response, the assessee filed its submissions. The submissions so filed were considered however, not found acceptable to the Assessing Officer and he proceeded to make an addition of Rs. 75,64,761/- on account of undisclosed investment in stock and another addition of Rs. 20,10,567/-on account of profit on sales of undisclosed stock.

Held by the Authorities:

On such undisclosed production and sales, the AO determined an amount of Rs. 75,64,761/- on account of undisclosed investment in stock and another addition of Rs. 20,10,567/- was made on account of profit on sales of undisclosed stock at the declared G.P of 1.6%. Therefore, we find that the whole addition of Rs. 95,75,328/- has been made by the Assessing Officer basis the findings of DGECI relating to manufacture and clandestine removal of finished goods and which has been confirmed by the order of the ld Commissioner Central Excise. At the same time, it is also an admitted fact that the assessee has moved in an appeal against the order of ld Commissioner Central Excise before the CESTAT who vide order dated 20-10-2017 has set-aside the whole demand raised against the assessee. The ld. CIT(A) has also recorded a similar finding that the AO has made addition based findings of search conducted by DGCEI which is approved by ld. Commissioner Central Excise, Jaipur. Further, the fact that the assessee has moved in an appeal was also noted by the ld CIT(A). Apparently, at the time of passing of the order by ld. CIT(A) on 23-3-2016, the order of the CESTAT was not pronounced and therefore, couldn't be considered by him.

In light of findings of CESTAT where the whole demand relating to clandestine manufacture and clearance of finished goods has been set-side, the findings of the AO which are solely based on the proceedings under

Central Excise therefore doesn't survive and the consequential addition made by him are liable to be deleted. At the same time, the Revenue would be at liberty to take action as per law where the matter so decided by the CESTAT is appealed against by the Revenue and is decided in its favour by the Courts.

Judgments Relied Upon by the Authorities:

Natani Rolling Mills (P.) Ltd.[CO Nos. 29 & 30/JP/2019 arising out of ITA No. 537 & 538/JP/2018 11-8-19

Raj Kumar Maheshwari ITA No. 536/JP/2019 Jaipur ITAT

Issues discussed and addressed:

Invalid Reopening

Facts of the Case:

The assessee is an Individual and earning income from salary. The assessing officer issued notice under section 148 on 22-3-2015 by recording the reasons that as per AIR data information received from the Office of the DIT CIB Rajasthan, Jaipur showing that the assessee has paid Rs. 3,85,336 against credit card bills in the financial year 2008-09 relevant to the assessment year under consideration, hence it was not possible to verify the tax liability in this transaction. Further, the assessee has not filed return of income for the year under consideration, therefore, believing that the income to the tune of Rs. 3,85,336 has escaped assessment, the assessing officer reopened the assessment. Since assessee has not responded to the notice under section 148 as well as the other notices issued by the assessing officer, accordingly the reassessment under section 147 was completed under section 144 of the Income Tax Act.

Held by the Authorities:

These reasons recorded by the assessing officer are factually not correct and the formation of belief by the assessing officer is actually based on assumption of incorrect facts. We find that the assessee has filed his return of income on 9-7-2010. Though the return was belated, however, the same was acknowledged by the department vide Acknowledgement No. 3471, the copy of the computation sheet has been placed at page 9 of the Paper Book which shows the details regarding the return of income declared by the assessee in the said return and the amount of tax payable on the said income. All the details are matching with the return of income filed by the assessee except the assessment year which is mistaken by the department as 2010-11 instead of 2009-10. Therefore, the assessee has duly filed the return of income declaring the total income at Rs. 2,34,560 which was acknowledged by the department. We further note that for the assessment year 2010-11 the assessment was again reopened by the assessing officer by issuing a notice under section 148 on 30-3-2017. However, the assessing officer has not made any addition but accepted the return of income

declared by the assessee in the original return of income while passing the order on 8-8-2017. Thus it is clear that the assessing officer has reopened the assessment only on suspicion of escapement of income on account of credit card payment of Rs. 3,85,336 without considering the fact that the assessee already filed his return of income declaring total income of Rs. 2,34,560 as income under the head 'Salary'.

Hence in the facts and circumstances of the case, we find that the reopening of the assessment by the assessing officer is without application of mind and simply going by the information received as per AIR Data. Hence the reopening of the assessment is quashed being invalid.

Dirisala Bala Murali I.T.A. No. 452/Viz/2019 Visakhapatnam ITAT

Issues discussed and addressed:

Addition u/s 68

Facts of the Case:

The assessing officer made the addition of Rs. 40,00,500 under section 68 of the Act with regard to deposits made in the bank account of the assessee in ICICI Bank.

Held by the Authorities:

As per the provisions of section 68, the amount found credited in the books of accounts for which the assessee failed to offer explanation to the satisfaction of the assessing officer required to be brought to tax under section 68, whereas in the instant case, the said sum was not credited in the books of accounts, but the amount was found credited in the bank account of the assessee. The correct course of action for taxing the sums paid into the bank account is to tax under section 69 of the Act. Neither the assessing officer nor the learned Commissioner (Appeals) has made addition under section 69. The cash deposits or deposits made in bank account required to be brought to tax under section 69 and not under section 68 of the Act.

Accordingly, we set aside the order of the learned Commissioner (Appeals) and delete the addition made by the assessing officer.

Judgments Relied Upon by the Authorities:

Smt. Asha Sanghavi in I.T.A. No. 33/Viz/2019

Smt. Babbal Bhatia in TS-306-ITAT-2018 Delhi ITAT

Ilesh Amrutlal Gadhia I.T.A. Nos. 549 & 550/Mum/2019 & I.T.A. Nos. 540 & 541/Mum/2019 Mumbai ITAT

Issues discussed and addressed:

Bogus Purchases

Facts of the Case:

The assessee being resident individual stated to be engaged in trading of steel and metal items under proprietorship concern namely M/s. Balaji Trading Company was assessed for year under consideration under section 143(3) read with section 153C of the Act on 30-11-2016 wherein the income of the assessee was determined at Rs. 385.07 Lacs after sole addition of bogus purchases of Rs. 381.02 Lacs as against assessed income of Rs. 4.04 Lacs.

The primary argument of assessee was that there was one-to-one correlation between the purchases and corresponding sales and the payment for purchases were through banking channels. The assessee had reflected certain purchases from an entity namely M/s. Ragini Trading & Investments Private Limited (RTIPL). As per conclusion of learned assessing officer, the assessee failed to prove the fact of dispatch, transportation and delivery of goods. The survey operations on M/s. RTIPL revealed that the said entity indulged in making purchases from various hawala parties without taking actual delivery of material. The said party was not maintaining any warehouse or godown and the goods purchased by said entity were sold on back-to-back basis to many other entities including assessee. During assessment of that entity, its books were rejected under section 145(3) and the profit was estimated @0.25%.

Held by the Authorities:

there could be no sale without actual purchase of goods considering the fact that the assessee was engaged in trading activities. The quantitative details were placed on record. There was one-on-one correlation of purchase and sale. The payment to the suppliers was through banking channels. The confirmation of M/s. RTIPL was placed on record. The business model of the assessee, as noted by learned Commissioner (Appeals), would explain the non-existence of stock movement register. The GP rate reflected by the assessee qua other years was not abnormal. Prima-facie, there is no change in the nature of business or business model. However, at the same time, the assessee failed to produce the supplier for confirmation of account. While framing the assessment of M/s. RTIPL, the books were rejected and an *ad hoc* estimation of profit was made by revenue authorities. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these suspicious/unverified purchases to factorize for profit earned by assessee against possible purchase of

material in the grey/unorganized market and undue benefit of VAT against such bogus purchases, which learned Commissioner (Appeals) has rightly done so. However, keeping in view the fact that the assessee was dealing in low-margin commodity like iron & steel which attracts lower VAT rate, the estimation of 12.5% with set-off of already declared GP was on higher side. The coordinate bench in the cited decision of assessee's son, on identical facts and circumstances, found merits in the contentions of the assessee and observed that the assessee took all possible steps and produced relevant documents to prove the genuineness of the purchases made from M/s. RTIPL. The evidences furnished by learned assessing officer were not disproved by learned assessing officer and therefore, the view taken by learned assessing officer was not based on any material. In the said background, the bench directed learned assessing officer to restrict the estimation to 0.11% on purchases made from M/s. RTIPL. This rate was nothing but the GP rate earned by the assessee on other purchases. Drawing analogy from the same & keeping in view the GP rates reflected by assessee in preceding as well as in succeeding years, we direct learned assessing officer to estimate the additions against suspicious/unverified purchases @1% on net basis, without any other benefit.

Important updates

a. The CBDT has extended due dates for furnishing tax audit report and filing of Income-tax Return for the Assessment Year 2020-21. The new due date for furnishing of tax audit report is 31-12-2020. The due date for filing of ITR is 31-01-2021 in case where taxpayer is required to get books of account audited or furnish report in respect of international/specified domestic transactions and 31-12-2020 in all other cases.

b. The Central Board of Direct Taxes (CBDT) has reduced the minimum rating from AA to A for certain funds mentioned in Rule 67(2) of the Income-tax Rules, 1962. Rule 67 prescribes an investment pattern for provident funds which is to be followed mandatorily to avail tax benefits.

c. A writ petition has been filed before the Delhi High Court with a pray to declare that Faceless Appeal Scheme, 2020 is discriminatory, arbitrary and illegal to the extent it provides discretionary hearing opportunity. It was claimed that the right of being heard, even through the videoconferencing mode is subject to the approval of the Chief Commissioner/Director General and thus same is discretionary.

d. The CBDT has issued guidelines, for Assessing Officer or Tax Recovery Officer, who are authorized to carry out function related to recovery of arrear or current tax demand as per the provisions of Income-tax Act. The revised guidelines comes into effect from immediate effect.

e. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.

f. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.

g. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.