

Important judgements and Updates

Sanmar Speciality Chemicals Ltd. TCA No. 358 of 2018 Madras High Court In favour of Assessee

Issues discussed and addressed:

Salary vs Capital Gain – Proceeds from Cashless Exercise of Stock Option - Income from ESOPs granted to consultant taxable as capital gains though such consultant became employee afterward

Facts of the case:

The assessee was a software engineer who was employed with Aerospace Systems Pvt. Ltd., a company registered in India between the period from 1995-1998. He was deputed to SIRF Technology Inc., U.S. in the year 1995 by Aerospace Systems Pvt. Ltd., India as an independent consultant. The appellant served SIRF USA from 1995-1998 as an independent consultant and later as an employee of SIRF USA from 2001-2004. The assessee thereafter returned to India and was employed in SIRF India. While on deputation to SIRF USA, the assessee was granted stock option by SIRF USA whereunder the assessee was given right to purchase 30,000 shares of SIRF USA at an exercise price of US \$0.08 per share. The assessee also had an option of cashless exercise of stock options which is an irrevocable direction to the broker to sell the underlying shares and deliver the proceeds of sale of shares after deducting the exercise/option price which was to be delivered to SIRF USA. In cashless exercise, the underlying shares are not allotted to the assessee and he is only entitled to receive the sale proceeds less the exercise price. The assessee in assessment year 2006-07 exercised his right under stock option plan by way of cashless exercise and received a net consideration of US \$ 283,606 and offered the gain as a long-term capital gain as the stock options were held nearly for ten years. The assessee also claimed deduction under section 54F of the Act.

The AO by an order passed under section 143(3) of the Act artificially split the transaction into two and brought to tax the difference between the market value of shares on the date of exercise and the exercise price as 'income from salary' and the difference between the sale price of shares and market value of shares on the date of exercise of 'income from short-term capital gains'.

Held by the Authorities:

The assessee was an independent consultant to SIRF USA and was not an employee of SIRF USA at the relevant time. Thus, there was no relationship of employer and employee between the SIRF USA and the assessee and therefore, the finding recorded by the tribunal that the income from the exercise of stock option has to be treated as income from salaries is perverse as it is trite law that unless the relationship of employer and employee exists, the income cannot be treated as salary.

Important judgements and Updates

Judgments Relied Upon by the Authorities:

Kamlesh Bahedia v. Asstt. CIT [2014] 50 taxmann.com 236/151 ITD 495 (Delhi - Trib.),

N.R. Ravikrishnan v. Asstt. CIT [2019] 102 taxmann.com 418/175 ITD 355 (Bang.).

Dr. Muthian Sivathanu v. Asstt. CIT [2018] 100 taxmann.com 49/173 ITD 585 (Chennai - Trib.).

Mahinder Singh ITA No. 1077 (CHD.) of 2019 Chandigarh ITAT In favour of Assessee – Matter Remanded

Issues discussed and addressed:

Section 68 – Seller of an agricultural land couldn't be compelled to enforce presence of buyer before tax authorities and in case of illiterate agriculturalist, cash deposited in bank account which he claimed from sale of agricultural land can't be straight way taxed u/s 68 and CIT (A) was directed to find out actual value of land before making any addition u/s 68.

Facts of the case:

The assessee, an illiterate agriculturist, was found to have deposited a certain amount in his bank account from sale proceeds of rural agricultural land to identified persons whose names and details were available in the sale deed. The Assessing Officer noticed that registration of land was done for a lesser value. He held that as assessee did not produce purchaser, difference between amount shown in sale deed and that deposited in bank was to be treated as unexplained cash deposits.

Held by the Authorities:

The assessee is claimed to be an illiterate agriculturist whose main source of income was from agricultural activities. The assessee had sold 14 Kanal odd to identified persons whose name and details are available in the sale deed i.e. land revenue records. There is nothing on record to show that the assessee could be said to have any authority, influence or power over the buyers so as to enforce their presence before the tax authorities. Admittedly, the only interested party with a motive to reduce costs by reducing stamp duty costs would be the purchaser who is identified. Thus, if his presence was so relevant, there was nothing to stop the Tax Authorities from ensuring his presence for which purposes, it becomes necessary to have on record the actual value of the specific land at the relevant point of time. The Tax Authorities have taken an easy route and have placed an impossible burden upon the assessee. As has been noted earlier, it is the duty of the tax authorities to assist tax compliance which means giving correct advice and following best practices. To attempt collecting tax on the basis of ignorance of the citizen is not expected from a tax administration in a developed economy. In the facts of the present case, the assessee has consistently claimed to be illiterate

Important judgements and Updates

evidenced by the fact that the relevant documents are carrying a thumb impression. The assessee claimed to be a purely an agriculturist having no other source of income. These facts remain unrebutted on record. Accordingly, considering the principle as laid down in the case of *Mangat Singh v. ITO* [IT Appeal No. 246 (Chd.) of 2018, dated 15-1-2019] namely the value of the land at the relevant point of time, the issue is restored back to the file of the Commissioner (Appeals) with direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

Hind Industries Ltd ITA No. 3535 (Delhi) of 2016 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Section 69C – No addition can be made u/s 69C where all payments for purchases have been made from books and details as regards the parties to whom the payment made were provide by Assessee.

Facts of the case:

The assessee was engaged in the business of marketing of manufactured fertilizers and retailed intermediate products as well as export of frozen and fresh meat. The Assessing Officer along with other things made disallowance of Rs. 79,13,46,369/- on account of unverifiable & unexplained cash purchases under section 69C of the Income-tax Act, 1961.

Held by the Authorities:

The sale of the assessee was never doubted by the Assessing Officer. As regards the purchase from the records as mentioned in the Assessment Order itself, was found that quantitative tally of purchases of meat and exports and the same was reflected in the credit column of the bank account of the assessee. It is not a case of the Assessing Officer that payments against purchases have been made by the assessee out of books of accounts. The contention of the Ld. DR are also not tenable as the assessee filed the details of the parties from whom purchases were made and the same is mentioned in the Assessment Order itself. Hence The CIT(A) was fully justified in restricting disallowance to the tune of 20 % of the purchases on account of cash payment which was duly reflected in the books of account of the assessee.