

Important judgements and Updates

Update No 10/2021

Dell India (P.) Ltd Writ Appeal No. 1145 of 2015 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 Mere change of opinion on consideration of the same material is no ground to invoke Section 147.

Facts of the case with respect to Issue No 1:

Writ applicant was engaged in the business of manufacturing and selling of computer hardware and other related products. The writ applicant recognised the extended warranty fees charged from the customer over the period to which the extended warranty relates i.e on 'Deferred Revenue Basis'. This approach was accepted by the AO during the original assessment. However the case of the Writ applicant was reopened u/s 148 against which the writ petition was filed.

Held by the Authorities with respect to Issue No 1:

When a power under section 147 is to be exercised, concept of change of opinion must be treated as an inbuilt test to check abuse of power of the Assessing Officer. Further, it is held that after 1st April 1989, the Assessing Officer has power to reopen provided there is a tangible material to come to the conclusion that there is escapement of income from assessment.

Nisharahemad Vajirkhan Pathan R/SCA No. 16304 of 2019 Gujarat High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 AO cannot issue notice to partners to question firm's investments if firm failed to file ITR

Facts of the case with respect to Issue No 1:

Writ applicant was one of the partners in a partnership firm running in the name and style of "M/s. Shree Khodiyar Developers". He was the signatory as a partner of the firm in the conveyance deed of the immovable properties purchased by the firm. It was not in dispute that the sale consideration for the purchase of the two immovable properties, referred to above, was paid from the account of the partnership firm. The case of the writ applicant was reopened u/s 147. The case of the AO was that addition made by the AO in case of one of the co-owner of the property is confirmed by the CIT (A) with a direction to ensure that assessment of unexplained investment in the hands of the other partners of the firm. Under these circumstances, there is no need to conduct separate enquiry for satisfaction of reason of escapement of income.

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Held by the Authorities with respect to Issue No 1:

Notice under section 148 is not sustainable in law as the properties in question were purchased by the partnership firm wherein the writ applicant is one of the partners. The writ applicant, in his individual capacity, was not the purchaser of the two immovable properties. It is the partnership firm which derived lawful title over the properties in question. In such circumstances, no addition can be made in respect of the alleged unexplained investment in the hands of the writ applicant.

It is true that under the law of partnership, a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners. But under the Income-tax Law, the position is different. The firm and the partners are distinct assessable entities. There is nothing in the partnership law to suggest that a firm cannot be treated as an entity for the purpose of dealing with the property.

The conditions precedent for resorting to reassessment under section 147 of the Act are not satisfied in the present case. Just because the partnership firm failed to file its return of income for the relevant year, by itself, will not confer jurisdiction upon the authority concerned to issue notice against the individual partners of the firm with respect to their individual return of income for the relevant year in consideration.

Infrastructure Development Fund I.T.A. No. 220/Chd/2020 Chandigarh ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 11(2) No denial of Exemption if Form 10 is filed during Assessment Proceedings.

Facts of the case with respect to Issue No 1:

Assessee-trust claimed exemption under section 11. AO did not allow accumulation under section 11(2) on account of non-filing of Form No. 10 before due date of filing of return of income.

Held by the Authorities with respect to Issue No 1:

Non-filing of the Form 10 was a mere irregularity and technical lapse which was to be condoned, especially when assessee had filed prescribed Form during assessment proceedings, therefore, the appellant deserves to be granted benefits under section 11(2).

Judgments Relied Upon by the Authorities with respect to issue No 1:

- a. Addl. Director of Income Tax (Exemptions) v. Manav (2008) 20 SOT 0517 (Del-Trib)
- b. Moti Ram Gopi Chand Charitable Trust v. Addl. CIT (2013) 59 SOT 197 (Del-Trib) :
- c. Jt. CIT v. Sewa Education Trust (2013) 27 ITR (AgraTrib) 292 :

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d. V. Ramakrishna Charitable Trust (2015) 155 ITD 727 (Chen-Trib) :

Kind Attention

This judgment relates to Assessment Year 16-17 i.e after amendment to Section 11(2) making it mandatory to file Form 10 before due date of filing return u/s 139(1).

Balika Vidyalaya Educational & Cultural Trust ITA No. 183/CTK/2019 Cuttack ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 12AA No Denial of registration without any dissatisfaction about objects of trust.

Facts of the case with respect to Issue No 1:

CIT disallowed assessee's claim of registration under section 12AA on the following grounds; that amendment and dissolution clauses of MOA were not proper; that in the winding clause, the assessee had no intention to transfer the trust properties to some other institution having 12A registration and 80G approval and that there was no clause in the MOA, which required auditing of accounts of the society by a CA. Further, the CIT noted that total receipts of the assessee were more than Rs. 1 crore and therefore, he took the view that the assessee was not eligible for exemption under section 10(23C)(iiiad). Further, the CIT also asked the assessee to furnish fee receipts books and the receipts for the donation. Assessee produced certain documents but could not produce some bills and vouchers; hence, the CIT doubted the genuineness of the activities of the trust.

Held by the Authorities with respect to Issue No 1:

A perusal of the order of the CIT showed that he had not recorded any adverse comment or dissatisfaction about objects of trust or genuineness of the trust activities. Only he observed some lacuna in the amendment and dissolution clauses. Thus, the CIT clearly went beyond the scope of enquiry contemplated under section 12AA and refused to grant the registration under section 12AA to the assessee on a totally irrelevant ground. Further, some bills and vouchers could not be produced by assessee due to time constrained by the CIT for appearing before him from a distance of more than 250 kms. and also other unavoidable reasons. Thus, it could be said that there was genuine cause for not furnishing the bills and vouchers. Therefore, the matter was remanded to the CIT and the assessee was directed to produce the bills and vouchers and books of account before the CIT for verification in respect of the claim and after getting the same, the CIT was also directed to examine and verify the genuineness of the activities of the trust and decide the issue afresh.

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Ajit Singh Melhotra IT(SS)A No. 63/Ind/2019 Indore ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 132(4) addition made on the basis of admission of assessee's son during the course of search based on loose papers however the same being recorded in books of accounts hence no separate addition is required.

Facts of the case with respect to Issue No 1:

Search and seizure operation under section 132 were carried out at residential premises of assessee. AO made addition of certain amount on account of disclosure made during the search under section 132(4). Assessee submitted that the addition was made merely on the basis of statement of his son wherein some additional income on account of loose papers was accepted. However, all those documents were properly recorded in the regular books of account of the persons to which those documents actually pertained. Therefore, the assessee while filing of his return of total income did not consider the amount of additional income, which was accepted by his son at the time of search on account of documents/loose papers.

Held by the Authorities with respect to Issue No 1:

It was found that the addition was made on the basis of admission of assessee's son during the course of search. It was contended by the assessee that all those documents were properly recorded in the regular books of account of the persons to which those documents actually pertained. However, it was found that the AO did not establish the fact that any of the documents as found and seized was not recorded in the books of account of the persons to which those documents actually pertained. Thus, there was force in the contention of the assessee that without referring to any of the documents, the same could not be binding on the assessee and the same could not be used against the assessee as evidence and that too in search assessment proceedings. Hence, the AO was directed to delete the impugned addition.

Judgments Relied Upon by the Authorities with respect to issue No 1:

- a. Pullangode Rubber & Produce Company Ltd. v. State of Kerala & Anr. (1973) 91 ITR 18 (SC)
- b. Kailashben Manharlal Chokshi v. CIT (2010) 328 ITR 411 (Guj),
- c. Ultimate Builders v. ACIT [ITA No.134/Ind/2019 dt. 9-8-2019 (Ind)]
- d. ACIT v. Shri Sudeep Maheshwari & Vice-Versa [ITA No.524/Ind/2013 dt. 13-2-2019 (Ind)].

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