

## Important judgements and Updates

Update No 88/ 2021

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**Subex Ltd I.T.A.No.378/2015 Karnataka High Court In favour of Assessee**

### Issues discussed and addressed:

Issue No 1      Section 35D rw.s 263      The claim u/s 35D which has been granted by the Assessing Officer could not be disallowed subsequently, without disturbing the decision in the initial year.

Section 35D      'Cost of the project' uses the word 'being' instead of 'namely' makes it restrictive and not illustrative in nature. **Against Assessee**

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

Assessee-Company acquired two companies i.e., Azure Solutions Ltd. and Syndesis Ltd. and claimed the cost incurred thereon for claiming deduction u/s 35D in AY 2008-09; Revenue, pursuant to the revision proceedings initiated u/s 263 held that cost incurred in acquiring companies could not be treated as cost of the project for computing deduction u/s 35D.

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

The first year of the claim under Section 35D of the Act was for the assessment year 2007-08 and in that year, the claim of the assessee had been accepted under Section 143[1] and no action under Section 147 or 263 of the Act had been taken in relation to the said assessment year. The benefit claimed relating to the assessment year 2007-08 which was allowed was not disturbed. Subsequently in the year 2009-10, the Commissioner of Income Tax has taken the matter in revision under Section 35D.

The claim u/s 35D which has been granted by the Assessing Officer could not be disallowed subsequently, without disturbing the decision in the initial year.

Once the claim has been granted by the assessing officer in respect of previous years, such claim cannot be disallowed subsequently without disturbing the decision in the initial year. In that context, it is held that the view adopted by the assessing officer is not a plausible view, it is now well settled that if two views are possible and the assessing officer has adopted one view, the same would not warrant exercise of the powers under Section 263 of the Act.

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

- a. Shasun Chemicals and Drugs Ltd., V/s. Commissioner of Income-tax-II, Chennai [(2016) 388 ITR 1 SC]
- b. Deep Industries Ltd., [(2016) 67 taxmann.com 6 (Gujarat)]

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### Held by the Authorities with respect to Issue No 2:

'Cost of the project' uses the word 'being' instead of 'namely' makes it restrictive and not illustrative in nature, The word "being" gets colour from the associated words. Preceding word "fixed assets" indicated as land, buildings, leaseholds, plant machinery relates to the nature of assets mentioned therein and the same is exhaustive. Acquisition of companies by acquiring 100% subsidiary shares would not be construed as acquisition. of fixed assets that were acquired or developed in connection with the extension of industrial undertaking or setting up of new industrial unit of the assessee.

### Judgments Relied upon by the Authorities with respect to Issue No 2:

- a. Commissioner of Income-tax V/s. Ashok Leyland Ltd., [and vice versa] [(2012) 349 ITR 663],

### Sun and Sun Inframetric Pvt Ltd I.T.A. No.21/RPR/2021 Raipur ITAT In favour of Assessee

### Issues discussed and addressed:

Issue No 1      Section 263      The revisional order passed alleging existence of some adverse material without enabling the assessee to respond thereto and without giving any effective opportunity despite express demand is thus palpably fragile and requires to be treated as illegal

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

Assessee-Company was assessed u/s 143(3) for AY 2015-16 at a loss of Rs.34.90 Lacs and was subjected to revisionary proceeding u/s 263. The notice u/s 263 was sent to the Assessee by an email more than 2 weeks before formally issuing it on the basis of various counts including Assessee's transactions with Gangotri Tracon P. Ltd. involving Rs.16 Cr. PCIT granted hearing to the Assessee within 48 hours from the date of signing the notice and passed the order setting aside the assessment with the directions which was challenged before ITAT.

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

In the event of fresh material coming to light, the revisional authority can not bypass the principles of natural justice and casually pre-empt such order to be erroneous. A cancellation of an order already passed and coming to the fore, based on fresh material, without performing quasi-judicial task of confronting the material to Assessee and weigh its defense thereon, would be clearly opposed to doctrine of legitimate expectations and would have to be construed as a mere ipse dixit and a perfunctory exercise of revisional powers.

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It must be acknowledged that such exercise of powers of revision of a concluded assessment and for no fault of assessee, hugely drains the assessee who has to undergo a restart of concluded proceeding. Keeping this in view, the revisional authority being a very senior officer in the hierarchy is expected to exercise powers conferred under section 263 with diligence, dexterity and reasonableness to achieve and advance the object and purposes of the enactment.

The revisional order so passed, in the instant case, alleging existence of some adverse material without enabling the assessee to respond thereto and without giving any effective opportunity despite express demand is thus palpably fragile and requires to be treated as illegal.

### Important Updates

- a. In the context of formulating the proposals for the Union Budget 2022-23, the Ministry of Finance has invited suggestions for changes in the duty structure, rates, and broadening of tax base on both direct and indirect taxes from the industry and trade associations. Suggestions may be sent to the ministry by 15-11-2021.
- b. The CBDT has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. A facility has been also provided to submit online feedback by taxpayer.