

## Important judgements and Updates

Update No 11/2022 (Previous Colander Year 100/2021)

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### Autozilla Solutions Pvt. Ltd ITA No. 1568/Hyd/2019 Hyderabad ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 56(2)(viib)      Once addition of share capital u/s 56(2)(viib) is set aside, sustaining any addition u/s 68 not tenable.

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

Assessee-Company, engaged in business of automobiles and auto parts was subjected to scrutiny assessment for AY 2016-17, whereby Revenue made an addition of Rs.79.91 lakh under Section 68; Alternatively, applying provisions of Section 56(2)(viib) addition of Rs.79.72 lakh was made; On appeal before the CIT(A), he granted relief for addition made u/s 56(2)(viib) but the addition made under Section 68 was not adjudicated by him, against his order.

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

Revenue disallowed the share premium raised by the Assessee u/s 56(2)(viib) which was also added to Assessee's income under Section 68. Once addition was made under one provision, it cannot be made under another provision which lead to double addition, which cannot be permissible in the IT Act. CIT(A) deleted the addition u/s 56(2)(viib) holding that the DCF method adopted by the Assessee is correct and therefore, it will be presumed that the addition deleted by the CIT(A) under one section out of two sections is accepted. Once Revenue accepted the amount received by the Assessee towards share capital and share premium and also the valuation method, then the total amount received by Assessee was acceptable.

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

DCIT Vs. M/s Auroglobal Comtrade Pvt. Ltd. in ITA No. 426/CTK/2018, order dated 14/12/2020

### Walkeshwar Chandanbala Co Operative Housing Society Ltd I.T.A. No. 849/Mum/2021 Mumbai ITAT

#### In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 80P      Denial of deduction u/s 80P for sole reason of its being situated in Mumbai is not legally sustainable and sets aside the CIT(A)'s order.

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

Assessee-Cooperative Housing Society was disallowed the deductions under Sections 80P(2)(d) and 80(P)(2)(c)(ii) in course of processing of its return. On appeal before the CIT(A), the appeal was dismissed by

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observing, “as the appellant is a Co-operative Housing Society situated in Mumbai and does not satisfy the clauses of section 80P mentioned above”..

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

Section does not provide that a co-operative housing society situated in Mumbai does not satisfy the clauses of Section 80P. Denial of deduction u/s 80P for sole reason of its being situated in Mumbai is not legally sustainable and sets aside the CIT(A)'s order.

### Mphasis Ltd IT(IT)A Nos.IS to 17/Bang/20 14Bangalore ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 201      Absence of limitation period to pass an order u/s.201(1) of the Act where the payee is a non-resident, will not empower the Assessing Officer to pass an order under section 201 of the Act at any time at his sweet will. It was held that period of four years would be reasonable period of time for initiation of proceeding under section 201.

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

Revenue noted that Assessee had not deducted tax at source in respect of its payment to overseas group entities for availing onsite software development support and initiated proceedings u/s 201(1)/(1A) holding Assessee as ‘Assessee-in-default’ by order passed in Jul’13.

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

Although Section 201(1) does not prescribe a time limit a reasonable time limit would have to be read in as otherwise the authorities would have an indefinite period to take action and the sword of uncertainty would hang forever over an Assessee and construed reasonable time as time limit imposed u/s 149. Provision of Section 201 as applicable to impugned AYs did not prescribe any period of limitation either for initiation or for completion of proceedings, further amendment brought in by Finance Act, 2009 prescribed periods of limitation but those provisions were applicable only when payments are made to "resident in India" and thus in case of non-resident payments no period of limitation is laid down in the Act. The issue can be addressed in two ways, firstly as held by judicial precedents, absence of limitation period to pass an order u/s.201(1) of the Act where the payee is a non-resident, will not empower the Assessing Officer to pass an order under section 201 of the Act at any time at his sweet will. Secondly, if one were to presume on the basis (as was canvassed by the learned standing counsel) that since the legislature has not prescribed a time limit for passing orders u/s.201(1) of the Act when the payee is a non-resident, the legislature wants to maintain the position that when the payee is ~ non-resident, there is no period of limitation, even then, the Hon'ble Delhi

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High Court in case of Bharti Airtel Ltd has held that the said limitation period even in respect of non-residents can be read into the provision of Sec.20 1(3) of the Act.

Thus, the impugned order passed under section 201(1) / 201(1A) of the Act is clearly barred by limitation as the order impugned has been passed on 29.7.2013 much after the expiry of period of limitation of 4 years from the end of the relevant AY.

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

- a. Mahindra and Mahindra Ltd, [2009] 30 SOT 374 (Mumbai) (SB)
- b. CIT vs. NHK 305 ITR 13 Delhi High Court
- c. Vodafone Essar Mobile Services Ltd. Delhi High Court
- d. Am. vis Union of India, [2016J 385 ITR 436 (Del.)
- e. C.J. International Hotels Pvt. Ltd., ITA No.57 of 2015
- f. Tata Teleservices Ltd. vis Union of India, 385 ITR 497 (Guj.)