

## Important judgements and Updates

Update No 47/ 2021

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### **Kaizen Stock Trade Pvt. Ltd ITA No. 1444/AHD/2018 Ahmedabad ITAT In favour of Assessee**

#### **Issues discussed and addressed:**

Issue No 1      Client Code Modification      Mere client code modifications carried out by the broker cannot be the basis to draw adverse inference against the Assessee

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

AO, on the basis of data received from the NSE for AY 2009-10, noted certain changes in client codes with respect to transactions in the F&O Segment and held that Assessee resorted to tax-evasion; AO held that the modification resulted in a reduction of Assessee's income to the extent of Rs. 1.86 Cr. which was deleted by CIT(A) as presumptuous and devoid of actual proof

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

Client Code Modification means modification / change of the client codes after execution of trades. Stock Exchanges provide a facility to modify any client code after the trade has been executed to rectify any error or wrong data entry done by the dealers at the time of punching orders. However, such Client Code modification is subject to certain guidelines as to the time limit within which the client code modification is to be carried out, terminal / system on which such modifications can be done etc. The facility is mainly to provide a system for modification of client codes in case genuine errors in punching / placing the orders. It is to be used as an exception and not a routine. To prevent misuse of the facility Stock Exchanges levy penalty / fine for all non-institutional client code modifications.

The client code modifications may give rise to the doubt/ suspicion which requires detailed investigations from the parties concerned to reveal the truth. Merely, there were client codes modifications carried out by the broker cannot be the basis to draw an inference against the assessee. In fact, in case of client code modification the code of the other party is entered at the place of the assessee. Thus the other party is also required to be investigated whether the other party was involved in such transaction. Besides this there has to be brought other corroborative evidences suggesting that there was the exchange of cash among the parties involved in such client code modification. As such there is no whisper in the order of the authorities below that there was the cash transfer between the parties for transferring the income of the assessee to the other party and vice versa. Thus in the absence of such verification/examination carried out by the authorities below the findings of the AO cannot be accepted. ITAT further noted that such modification was carried out in less than 1% of transactions in middle of the year and thus, not a colourable device adopted for reducing profits

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**Krishna Coil Cutters Pvt. Ltd Ahmedabad ITAT In favour of Assessee**

**I.T.A. Nos. 1492/Ahd/2014, 545/Ahd/2016 & 2491/Ahd/2017**

### Issues discussed and addressed:

Issue No 1      Section 2(22)(e)      Section 2(22)(e) of the Act requires money so lent to be only 'substantial part' of business and in contrast to the 'principal business' as wrongly assumed by the AO.

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

Assessee-Company, engaged in manufacture of HR / CR sheets and trading in MS plates, availed unsecured loan of Rs. 19.65 Cr. from its sister concern engaged in similar business; Assessee held 21.45% shares in the lending company whereas the lending company held 40.83% shares in the Assessee-Company; AO held the amount lent to be taxable as deemed dividend which was deleted by CIT Appeals.

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

On facts, it has emerged that the lender company has charged interest on the advances made to the assessee company. In the circumstances, the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra vs. CIT (2011)338 ITR 538(Cal) has observed that advances given by the lender was not for the individual benefit of the shareholder but for business purposes and therefore such transactions would not fall within the sweep of deeming fiction created under s.2(22)(e) of the Act. This reason on a standalone basis is sufficient to exclude the applicability of Section 2(22)(e) of the Act on the money received by the assessee.

It is also simultaneously the case of the assessee that the lender company was substantially engaged in money lending activity. Furthermore, the lender company has charged interest on the loans advanced to the assessee. In these facts, the case of the assessee is squarely covered by the decision of the Hon'ble Gujarat High Court in Pr. CIT v Mohan Bhagwatprasad Agrawal [2020] 115 taxmann.com 69 (Gujarat) & CIT Vs. Parle Plastics Ltd. (2011) 332 ITR 63 (Bombay). Section 2(22)(e) of the Act requires money so lent to be only 'substantial part' of business and in contrast to the 'principal business' as wrongly assumed by the AO.

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

- a. Pradip Kumar Malhotra vs. CIT (2011)338 ITR 538(Cal)
- b. Pr. CIT v Mohan Bhagwatprasad Agrawal [2020] 115 taxmann.com 69 (Gujarat)
- c. CIT Vs. Parle Plastics Ltd. (2011) 332 ITR 63 (Bombay).

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### Important Updates

- a. The Govt. has announced issue price of Sovereign Gold Bond Scheme 2021-22- Series IV. The issue price of the Bond during the subscription period shall be Rs. 4,807/- per gram. The Government has also decided to allow discount of Rs 50 per gram from the issue price to those investors who apply online and the payment is made through digital mode.
- b. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AC which prescribes the manner for computation of short-term capital gains and written down value under section 50 if depreciation has been obtained by assessee.
- c. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.
- d. In view of difficulties faced by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the new e-filing portal [www.incometax.gov.in](http://www.incometax.gov.in), the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till July 15, 2021.