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CHARTERED ACCOUNTANTS

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Domestic Tax Judicial Decisions

SC affirms the view that no disallowance under section 14A can be made once the assessee's owned funds exceed investment yielding tax free income.

South Indian Bank Vs. CIT [TS-849-SC-2021]

(In favour of: Assessee)

Relevant Facts

The assessee was a scheduled bank. The assessee, in course of its business had made investments in bonds, securities and shares from which it had earned interest on securities & bonds and dividend income on shares and UTI units. Interest on tax free bonds and dividend earned was a tax-free income which was not chargeable to tax in India. The assessee, in its tax return filed, had not made any disallowance under section 14A of the Income Tax Act, 1961 ('the Act') on the basis that it had sufficient own funds, which were more than the investment made in the securities, bonds and shares. The assessee had not maintained separate accounts for the investments made in bonds, securities and shares, wherefrom the tax-free income was earned. In absence of separate accounts for investment which earned tax free income maintained, the AO made proportionate disallowance of interest, attributable to the funds invested to earn tax free income.

Held

Proportionate disallowance of interest is not warranted under section 14A of the Act for investments made in tax free bonds/ securities which yield tax free dividend and interest to the assessee in those situations where, interest free own funds available with the assessee, exceeded investments yielding tax-free income.

In the absence of any statutory provisions, which obligates the assessee to maintain separate accounts, it was not possible for the AO to make proportionate disallowance of interest, even where such separate accounts are not maintained.

The Supreme Court giving reference to 18th century economist observed that in taxation regime, there is no room for presumption, and nothing can be taken to be implied. The tax an individual or a corporate is required to pay, is a matter of planning for a taxpayer and the Government should endeavor to keep it convenient and simple, to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax, equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue.

Cognizance for extension of limitation period due to Covid 2019 [TS-901-SC-2021]

The Supreme Court, in view of the pandemic situation in India, had taken suo motu taken cognizance of the difficulties faced by the litigants, in filing petitions/ applications/ suits/ appeals/ all other proceedings. The Supreme Court accordingly had passed order dated 23 March 2020 indefinitely extending the limitation period for filing petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the period of limitation ('limitation period') prescribed under the general or special laws. Thereafter, owing to considerable improvement in the pandemic scenario, the Supreme Court vide order dated 8 March 2021 had brought an end to the limitation period.

Due to second outburst of COVID-19 pandemic, the Supreme Court by its order dated 27 April 2021, had reinstated the extension of limitation period for all judicial/quasi-judicial proceedings, till further order. With the situation now becoming near normal, the Supreme Court by order dated 23 September 2021 has decided to end the extension of the limitation period with the following directions:

- In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15 March 2020 till 2 October 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15 March 2021, if any, shall become available with effect from 3 October 2021.
- In cases, where the limitation would have expired during the period between 15 March 2020 till 2 October 2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3 October 2021. In the event the actual balance period of limitation remaining, with effect from 3 October 2021, is greater than 90 days, that longer period shall apply.

Allahabad HC quashes reassessment notices issued under section 148 on or after 1 April 2021 under the old reassessment regime.

Ashok Kumar Agarwal [TS-926-HC-2021] (Allahabad High Court)

(In favour of: Assessee)

Relevant facts

74 Writ petitions were filed to challenge initiation of re-assessment proceedings under Section 148 of the Act. All reassessment proceedings were initiated by issuing notices after 1 April 2021.

Held

The Finance Act 2021 had substituted section 147 of the Act with effect from 1 April 2021. The old sections 147 were omitted from the statute

book and were replaced by new sections 147 (including section 148A) with effect from 1 April 2021. Substitution omits and thus obliterates the pre-existing provision.

In absence of any saving clause existing, either under the Ordinance or the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 ('TOLA 2020') or the Finance Act 2021, there exists no presumption that old provisions continue to operate, beyond 31 March 2021. In absence of any legislative intent expressed either under the Finance Act, 2021 or under the TOLA 2020, to preserve any part of the pre-existing Act, plainly, reference to provisions of sections 147 and 148 of the Act and the words 'assessment' and 'reassessment' appearing in the Notifications issued under the TOLA 2020 may be read to be indicating only at proceedings already commenced prior to 1 April 2021, under the Act (before amendment by the Finance Act, 2021).

Section 1(2)(a) unequivocally enforced sections 2 to 88 of the Finance Act, 2021, w.e.f. 1 April 2021. There can be no dispute if any valid proceeding could be initiated under the pre-existing section 148 read with section 147, after 1 April 2021.

The delegation made could be exercised within the four corners of the principal legislation and not to overreach it. TOLA 2020 does not delegate any power to legislate - with respect to enforceability of any provision of the Finance Act, 2021 and those provisions (Sections 2 to 88) had come into force, on their own, on 1 April 2021. Any exercise of the delegate under the TOLA 2020, to defeat the plain enforcement of that law would be wholly unconstitutional.

Non-obstante clause created under section 3(1) of the TOLA 2020 must be read in the context and for the purpose or intent for which it is created. It cannot be given a wider meaning or application as may defeat the other laws.

- Even though the Allahabad High Court has quashed all the notices issued after 1 April 2021, it has left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by the Finance Act 2021, after making all compliances, as required by law.
- The Allahabad High Court disagreed with the decision of Chhattisgarh High Court in case of Guruteg Bahadur Rice Mill Vs. ACIT & Pr. CIT, wherein it has held that Notice issued under section 148 after 1 April 2021 without following section 148A held to be valid in view of extension granted by the CBDT Notifications. The Allahabad High Court examined the decision of Chhattisgarh High Court and disagreed with the said decision for the reasons viz. notification dated 31 March 2021 issued under the TOLA 2020, which is a delegated legislation can never overreach any Act of the principal legislature. It was observed by Allahabad High Court that It was not possible to ignore the provisions of, either the TOLA 2020 or the Finance Act, 2021 to read and interpret the provisions of the Finance Act, 2021 are inoperative, in view of the facts and circumstances arising from the spread of the pandemic COVID-19.
- Delhi High Court has started the hearing in a batch of over 1300 writ petitions.
- Bombay High Court has listed the batch of 304 writ petitions for hearing on 11 October 2021.
- High Courts at Bombay, Delhi, Kolkata, Kerala, Karnataka and Rajasthan have granted interim stay on the proceedings.
- The Income tax Department has moved a petition before the Supreme Court for transferring all the writ petitions on the issue to the Supreme Court. The transfer petition of the Department is pending.

Bombay High Court quashes the assessment order passed under the faceless assessment scheme for not furnishing mandatory draft assessment order to assessee

Chander Arjandas Manwani Vs. National Faceless Assessment Centre & Ors. [TS-899-HC-2021(BOM)]

(In favour of Assessee)

Relevant facts

The assessee filed his tax return for AY 18-19. He received a notice dated 22 September 2019 under section 143(2) of the Act, which was duly replied by the assessee. The AO, thereafter, issued another notice dated 18 January 2021 calling upon the assessee, to show cause as to why the assessment should not be completed as per the draft assessment order. On perusal of the notice, it was not a draft assessment order but a notice calling upon the assessee to provide further details and documentary evidence. The assessee provided the requisite details and requested for a personal hearing. The assessee did not receive a draft assessment order. No personal hearing was also granted. The assessee challenged the final assessment order dated 2 March 2021 passed under section 143(3) of the Act, before the Bombay High Court by filing a writ petition on the ground that no draft assessment order was issued as per the Faceless Assessment Scheme, 2019.

Held

The assessee in his replies dated 26 January 2021, 27 January 2021 and 5 February 2021 had sought personal hearing. Notwithstanding these requests, the AO has neither granted personal hearing, nor stated in the assessment order why the personal hearing was not granted. The assessment order dated 2 March 2021 was required to be set aside on this ground itself.

The Faceless Assessment Scheme, 2019 as per the CBDT Circular dated 13 August 2020, provides that where a modification is proposed, the National e-Assessment Centre shall provide an opportunity to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order. This has also not been complied with.

Any assessment order which is not in conformity with the Faceless Assessment Scheme, 2019, shall be treated as non-est and shall be deemed to have never been passed.

KEY TAKE AWAY

- SC affirms the view that no disallowance under section 14A can be made once the assessee's owned funds exceed investment yielding tax free income.
- Cognizance for extension of limitation period due to Covid 2019 [TS-901-SC-2021]
- Allahabad HC quashes reassessment notices issued under section 148 on or after 1 April 2021 under the old reassessment regime.
- Bombay High Court quashes the assessment order passed under the faceless assessment scheme for not furnishing mandatory draft assessment order to assessee

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