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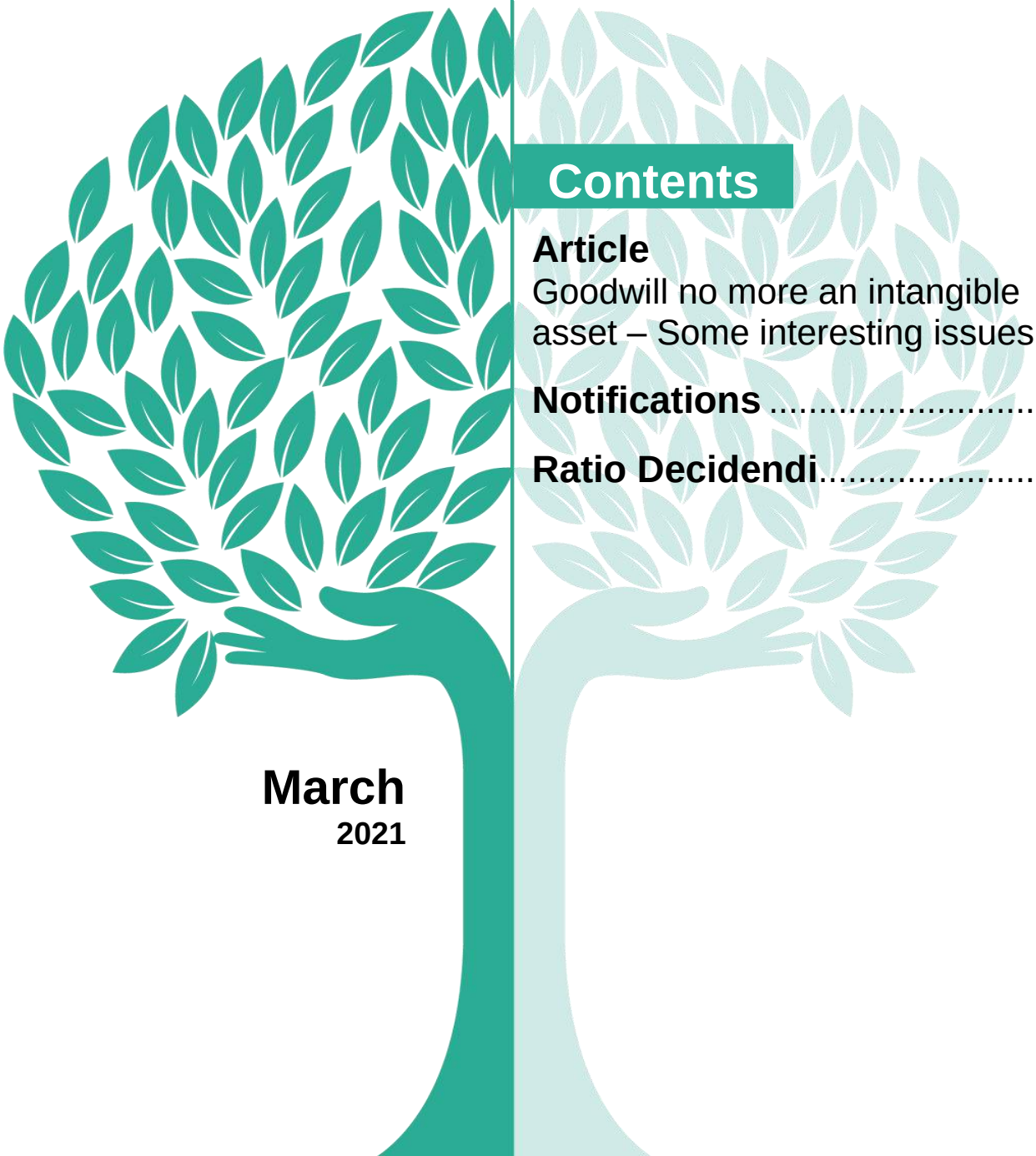

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Goodwill no more an intangible asset – Some interesting issues

By **Abhinov Vaidyanathan**

Introduction

All along there has been a long-drawn litigation between the assessees and the Department on whether goodwill arising out of a business purchase or a business combination is eligible for depreciation under Section 32 of the Income Tax Act, 1961 ('**IT Act**').

Section 32 of the IT Act allows depreciation for both tangible and intangible assets which are owned, wholly or partly, by the assessee and used for the purposes of the business or profession. Explanation 3 to Section 32(1) provides that for the purposes of Section 32(1) 'assets' shall mean:

a. Tangible assets, being buildings, machinery, plant or furniture;

b. Intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature.

Further, it may also be relevant to note that the term 'block of assets' under Section 2(11) of the IT Act has also been given the same meaning as mentioned in Explanation 3 to Section 32(1). However, the term 'Goodwill' was specifically not included in both the definitions.

In spite of 'Goodwill' not being included in the definition of 'assets' or 'block of assets', the assessees have been claiming depreciation on the acquired goodwill by relying on the Supreme Court decision of *CIT* v. *Smifs Securities Ltd*.[1] The issue before the Supreme Court in the said case was whether 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the IT Act. The Apex Court held that a reading of the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under that expression by applying the principle of *ejusdem generis*. Therefore, the Apex Court held that goodwill is an asset under Explanation 3(b) to Section 32(1) of the IT Act and, thus, it is eligible for depreciation under Section 32(1) of the IT Act. The decision was followed by various Tribunals.[2]

After about 8 long years, the Finance Bill, 2021 has proposed substantial amendments w.e.f. 1 April 2021, which might have the effect of undoing the benefit derived by the assessees based on the above decision in terms of claiming depreciation on goodwill.

Amendments proposed by the Finance Bill, 2021

The Finance Bill 2021 has proposed to amend Section 2(11) of the IT Act to exclude goodwill of a business or profession from the 'block of assets' and also proposes to amend clause (ii) to Section 32(1) to provide that 'goodwill of a business or profession' shall not be eligible for depreciation. Further, an amendment has also been proposed to the definition of

[1] *CIT* v. *Smifs Securities Ltd.* - (2012) 24 taxmann.com 222 (SC).
[2] *ACIT* v. *Bharati Teletech Ltd.* - (2014) 46 taxmann.com 26 (Delhi-Tri.); *CLC & Sons (P) Ltd.* v. *ACIT* - (2018) 95 taxmann.com 219 (Delhi-Tri.) (SB).

'assets' under Explanation 3 to Section 32(1) that 'goodwill of a business or profession' shall not be treated as an 'intangible asset' for the purposes of Section 32(1) of the IT Act.

Necessary consequential amendments have also been made to Section 50 of the IT Act wherein the CBDT may prescribe a manner to determine the written down value ('**WDV**') of the block of asset and short-term capital gains. Further, necessary amendments have also been made to Section 55 of the IT Act w.r.t. calculating the cost of acquisition.

The reasoning given in the Memorandum explaining the Finance Bill, 2021 for excluding goodwill from the ambit of intangible assets is that the actual calculation of depreciation of goodwill is required to be carried out in accordance with various other provision of the IT Act[3]. Once those provisions are applied, in some situations (like that of business re-organization) there could be no depreciation on account of actual cost being zero and the WDV of that asset in the hands of the predecessor/amalgamating company being zero. It is further stated that goodwill, in general, is not a depreciable asset and it depends upon how the business runs, goodwill may see appreciation and in the alternative no depreciation to its value. Hence, for the said reasons assessees have been barred from claiming depreciation on goodwill.

Some interesting issues

Applicability of proposed amendments to business re-organizations concluded prior to 1 April 2021 and future business re-organizations

The question that arises is whether an assessee already claiming depreciation for a business re-organization done prior to FY 2020-21 be able to claim depreciation on goodwill from FY 2020-21. Let us take an example, 'A' enters into a scheme of amalgamation with 'B' in 2017. Through the amalgamation, 'A' acquires the business/assets of 'B' which also includes goodwill. 'A' all along from 2017 has been claiming depreciation on the goodwill. The question that needs to be answered is whether 'A' can still continue to claim depreciation of the goodwill from FY 2020-21.

Keeping in mind that an amendment has been made to the definition of 'Block of assets' to exclude 'Goodwill' *per se* from its ambit, it would be difficult for the assessees to claim depreciation on goodwill even though the amalgamation had taken place prior to FY 2021. In other words, going forward, the assessees would not be able to claim depreciation on goodwill even if they were claiming it prior to FY 2020-21.

It may also be relevant to note that a similar amendment to exclude goodwill from the definition of WDV has not been made. If such an amendment was proposed, it would have made the position very clear. Be that as it may, it is still possible to say that the amendment proposed to exclude goodwill from the definition of 'Block of assets' under Section 2(11) of the IT Act would suffice to bar the assessees from claiming depreciation on goodwill from FY 2020-21. From the above discussion, it can be inferred that going forward, goodwill is not eligible for depreciation under any circumstance.

Impact of existing litigation pertaining to the past years

Another question that may arise is whether the Department can take a stand that the assessees must not be allowed depreciation on goodwill for previous years which is in litigation, by applying the new amendments. It can be inferred from the Memorandum explaining the

[3] 6th proviso to the Section 32(1), Explanation 2 to Section 32(1), Section 43(6)(c), Explanation 2 to Section 43(6)(c).

Finance Bill, 2021 that the said amendments will take effect from 1 April 2021 and will accordingly apply to the assessment years 2021-22 and subsequent assessment years. Therefore, this being a substantive amendment, it would not be possible to deny the assessees the benefit of depreciation on goodwill for the periods prior to AY 2021-22 by applying the new amendments.

Can transactions be concluded by recognizing other intangibles?

As we all know, the term 'Goodwill' has not been defined in the IT Act. Goodwill can be attributed to multiple factors, like location of a business, uniqueness of a product, etc. Absent a definition for goodwill, it is possible to ascribe multiple intangibles as forming part and parcel of goodwill. For instance, an assessee may record customer lists, or brand as an intangible asset and claim depreciation thereon. It is likely that the Department may now contend that even these assets are nothing but goodwill and therefore, though recognized separately under different names, all these would also tantamount to goodwill and therefore deny the benefit of depreciation. Therefore, the proposed amendments are likely to lead to new avenues of litigation where the dispute may surround on what would essentially constitute goodwill. One has to wait and watch as to how things unfold when these new issues come up for litigation.

Conclusion

In light of the above, it can be said that excluding goodwill from the ambit of 'Block of assets' under Section 2(11) and 'assets' under Section 32(1) of the IT Act is one of the key changes made to the Income Tax law in this Budget. The position of law seems to be clear that goodwill can no longer enjoy benefit of depreciation under the IT Act. However, as discussed in the Article, we can expect new issues to crop up which might lead to more litigation in the future. Therefore, it is necessary for the business to revisit the positions already taken to avoid such litigation.

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Notification

Vivad se Vishwas Scheme – Dates extended for filing declaration and payment

The Central Board of Direct Taxes ('**CBDT**') has by Notification S.O. 964(E), dated 26 February 2021 further extended the time limit for opting for Vivad se Vishwas Scheme ('**VSV**') as follows:

1. Time limit for filing of declaration under VSV has been extended from 28 February 2021 to 31 March 2021.
2. Date for payment without any additional amount has been extended from 31 March 2021 to 30 April 2021.
3. Date for payment with interest is extended from 1 April 2021 to 1 May 2021.

Due dates for passing penalty order, assessment/reassessment, etc. extended

The Central Government has further relaxed certain due dates. Notification No. S.O. 966(E), dated 27 February 2021 has been issued for this purpose in exercise of powers conferred by Section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

1. For passing of any order relating to imposition of penalty under the IT Act:
   a) the 29 June 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Income-tax Act falls, for the completion of such action; and
   b) the 30 June 2021 shall be the end date to which the time limit for completion of such action shall stand extended.
2. For assessment/re-assessment, the time limit for completion under Section 153 or 153B:
   a) which expires on 31 March 2021 (as extended), such time limit shall stand extended to 30 April 2021;
   b) not covered under (*i*) and which expires on 31 March 2021, such time limit shall stand extended to 30 September 2021;
3. Where the specified Act is the Prohibition of *Benami* Property Transactions Act, 1988, then,
   a) 30 June 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the *Benami* Act falls, for the completion of such action; and
   b) 30 September 2021 shall be the end date to which the time limit for completion of such action shall stand extended.

Black money cases to be transferred to Central Charges

The CBDT has directed that all cases under the Income-tax Act with jurisdictional Income-tax Authorities, where proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('**Black Money Act**') are pending, shall be transferred to the respective Central Charges by the competent jurisdictional Income-tax Authority by issue of appropriate orders under Section 127 of Income-tax Act. Instruction F. NO. 225/24/2021/ITA-II, dated 23 February 2021 also provides guidelines for smooth transfer of such cases to the respective central charge. The Board has directed the Addl. CIT and JCIT of respective ranges of Central Charges to exercise the powers and perform the functions of Assessing Officer under the Black Money Act.

Vivad se Vishwas Scheme – Consequential Order to be passed by Assessing Officer

The CBDT has clarified that where the Designated Authority ('**DA**') under the Direct Tax Vivad se Vishwas Act, 2020 has passed orders under sub-sections (1) and (2) of Section 5 of the said Act, the Assessing Officer shall pass consequential order under the Act. It may be noted that Section 5(1) provides for the DA to pass a determination order within fifteen days from the date of receipt of the declaration while as per Section 5(2), the DA is required to pass order for full and final settlement of the tax arrears. Circular No. 3/2021, dated 4 March 2021

has been issued as representations were made stating absence of provision available to the Assessing Officer to give effect to the Orders passed by the DA.

Potential cases for action under Section 148 specified

The CBDT has vide Instruction F. No. 225/40/2021/ITA-II, dated 4 March 2021 has specified certain category of cases which are to be considered as 'potential cases' for taking action under Section 148 of the Income Tax Act, 1961 by the jurisdictional Assessing Officer, by 31 March 2021 for the A.Y. 2013-14 to A.Y. 2017-18. The case specified are,

I. cases where there are Audit Objections (Revenue/Internal) which require action under Section 148;

II. cases of information from any other Government Agency/Law Enforcement Agency which require action under Section 148;

III. potential cases including:

   (a) Reports of Directorate of Income-tax (Investigation),

   (b) Reports of Directorate of Intelligence & Criminal Investigation,

   (c) Cases from Non-Filer Management System (NMS) & other cases as flagged by the Directorate of Income-tax (Systems) as per risk profiling;

IV. cases where information arising out of field survey action, requiring action under Section 148.

V. cases of information received from any Income-tax authority requiring action under Section 148 with the approval of Chief Commissioner of Income Tax concerned.

The Board has also clarified that no other category of cases apart from the above mentioned will be taken up for issuing notices under Section 148 and these instructions will not be applicable to central charge cases and International Taxation cases.

Double taxation on individuals who could not leave India due to pandemic – CBDT seeks information

In light of the representations requesting for relaxation in determination of residential status for year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights, the CBDT has asked individuals facing issues of double taxation, even after taking into account relief provided under the DTAAs, to furnish information in Form-NR by 31st March, 2021. Circular No. 2 of 2021, dated 3 March 2021 issued for the purpose states that after obtaining the information, the Board will examine whether any relaxation is required to be provided and if required, whether a general relaxation is needed or whether specific relaxation to individuals can be provided.

Faceless Penalty Scheme, 2021 – Scope of 'penalties' to be assigned to the Scheme clarified

The CBDT has clarified that the following penalties will remain outside the purview of the Faceless Penalty Scheme, 2021. Accordingly,

a. penalty proceedings arising/pending in the Investigation Wing, the Directorate of I&CI, erstwhile DG (Risk-Assessment) or by any prescribed authority shall remain outside the purview of the Scheme, in addition to the exclusions provided in the Order under Para 3 of the Scheme *vide* F.No. 187/4/2021-ITA-1, dated 20 January 2021,

b. penalty proceedings arising out of any statues other than the IT Act shall remain outside the purview of the Scheme, and

c. all the penalties imposable by the officers of the level of Commissioner/Director/Commissioner (Appeals/Appeal Unit) and above shall remain outside the purview of the scheme and be disposed by the respective officer.

Further, as per Order F.No. 187/4/2021-ITA-1, dated 20 February 2021, all the penalties imposable under the IT Act, except for the exclusions mentioned above, by the officers of the rank of Addl.CIT/JCIT and below, shall remain with the National Faceless Assessment Centre as per the Order under Para 4 of the Scheme *vide* F.No. 187/4/2021-ITA-1, dated 20 January 2021.

Ratio Decidendi

Face of foreign cab aggregator in India not liable to deduct tax under Section 194C for payments made to driver partners

The cab aggregator mobile App (licensed to Uber B.V. in Netherlands) acted as an intermediary for communication between the driver partners and users and facilitated contract between these two parties. For providing lead generation services, a service fee was charged from the driver partners and the assessee in India was acting as payment and collection service provider for an agreed consideration. As payment and collection service provider, payment made by users were received by assessee and after deducting necessary service fee, the same was disbursed to the driver partners.

The Assessing Officer held that since Uber B.V. (company in Netherlands) was in the business of providing transportation service and the assessee was the face of Uber B.V. in India, tax ought to have been deducted under Section 194C by the assessee in making payments to Driver partners on behalf of Uber B.V. The first Appellate Authority upheld the order of the Assessing Officer.

Observing that for attracting Section 194C in the hands of the Indian assessee, the assessee must be the 'person responsible for making payment', disbursements made to Driver partners must be in pursuance of carrying out work by the driver partners for the assessee and the contract is entered into between driver partners and the assessee for the said work, the ITAT held that the assessee does not satisfy any of the said conditions and hence, provisions of Section 194C were not attracted in this case. It noted that the assessee was only a payment and collection service provider which collected money and made payment on behalf of Uber B.V. and further cannot be expected to deduct tax at source in circumstances where payment was made directly to driver partners by the users. It was of the view that it can be concluded that Uber B.V. was involved only in providing lead generation service

and the transportation service is provided only by Driver Partners. It was noted that Uber B.V was also recognized only as an aggregator under the Service tax law. [*Uber India Systems (P) Limited* v. *JCIT* - [2021] 125 taxmann.com 185 (Tri-Mumbai]

Compensation received for pre-mature termination of contract manufacturing agreement constitutes capital receipt and hence not taxable under Section 28(va)(a)

The assessee, engaged in the business of manufacture and marketing of pharmaceutical products, entered into a contract manufacturing agreement with another company for a period of 10 years. That company terminated the contract prior to the expiry of the 10 year period and paid for loss of investment and profit. The Assessing Officer held that the amount received was in the nature of non-compete fee and hence taxable under Section 28(va)(a) of the IT Act. The CIT(A), upon appeal, also held that the amount received was in the nature of non-compete fee for not using technical know-how and hence upheld the Order.

Upon appeal to the ITAT, the Tribunal noted that compensation received from termination of an agreement was made taxable under Section 28(ii)(e) of the IT Act only from AY 2019-20. Observing that the case in hand pertained to period before the said amendment, it was held that the compensation received could not be taxed in terms of said section. As regards taxability under Section 28(va)(a), the ITAT held that compensation received by the assessee was a capital receipt, for loss of source of income and for relinquishing right to sue under the Agreement and that the said compensation cannot be considered as non-compete fee. Noting that the assessee was not having necessary know-how for manufacturing of drugs to be supplied to the other company, it was held that no amount was taxable in terms of Section 28(va)(a) of the IT Act. Reliance was placed on *CIT* v. *Parle Softdrinks (Bangalore) P. Ltd*.[4] [*Sai Mirra Innopharm Private Limited* - TS-64-ITAT-2021 (CHNY)]

Booking of flat and payment of consideration within stipulated time will suffice for exemption under Section 54

Claim of deduction under Section 54 of the IT Act was denied by the Assessing Officer on the ground that the amount of capital gains was not invested in purchase or construction of a residential house within stipulated time of filing Return of Income under Section 139(1) of the IT Act. The Assessing Officer further held that that booking of a flat cannot be equated to purchase or construction. Factually, the Assessee had booked the flat, however the flat was not completed and the Assessee had not got possession till completion of Assessment. The consideration for purchase of flat was however paid before the due date for filing belated return of income under Section 139(4).

The Commissioner of Income Tax (Appeals) confirmed the stand of the Assessing Officer. Upon appeal, the ITAT, relying on decisions of the Punjab and Haryana High Court in the cases of *Jagriti Aggarwal*[5] and *Jagtar Singh Chawla*[6], held that investment made within the due date under Section 139(4) would be valid for the purpose of claiming exemption under Section 54. It also noted that the provisions of the IT Act nowhere required that the construction of the

[4] [2018] 400 ITR 108 (Bom). SLP filed by Revenue dismissed by SC in [2018] 97 taxmann.com 136
[5] [2011] 15 taxmann.com 146
[6] [2013] 33 taxmann.com 38

property must also be completed within 3 years. Observing that the assessee had made the entire investment within 3 years from date of transfer of original asset, it was held that the same must be construed as invested in purchase/construction. Decision of ITAT Jaipur in the case of *Ram Prakash Miyan Bazaz*[7] was relied upon. [*Harminder Kaur* v. *ITO* - TS-74-ITAT-2021 (Del)]

Interest on delayed compensation received in terms of RFCTLARR Act is exempt

The assessee received interest on delayed compensation from compulsory acquisition of land under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2003 ('**RFCTLARR Act**'). The said interest was claimed as exempt income in terms of Section 96 of RFCTLARR Act. The AO held that interest on compensation was taxable under Section 56(2)(viii) of the IT Act. In first appeal, the CIT(A) held that interest on delayed payment falls within the ambit of compensation for acquisition of land and thus, under Section 96 of the RFCTLARR Act, the same was exempt and cannot be brought to tax.

The ITAT held that as per Section 3(i) of RFCTLARR Act, the term compensation includes interest also and that once compensation is not taxable in terms of Section 96 of RFCTLARR Act, any enhanced compensation and interest thereon are also not taxable. The ITAT was of the view that and the such income cannot be brought to tax as interest income under Section 56(2)(viii) of the IT Act. It noted that the position of law was also clarified by CBDT Circular No. 36 of 2016. [*ACIT* v. *SV Global Mill Ltd.* - TS-58-ITAT-2021(CHNY)]

[7] [2014] 45 taxmann.com 550

Assessment of an assessee consequent to information obtained during search of another person must be under Section 153C and not under Section 153A

Appeals were filed by the Revenue against the common Order passed by the Income Tax Appellate Tribunal which had set aside the proceedings initiated by the department under Section 153A. The assessee was allotted shares in an unlisted company in the year 2010. The shares of the company were subsequently listed on the Bombay Stock Exchange and the assessee sold the shares in the year 2014, claiming long term capital gains as exempt under the IT Act. In 2015, a search was conducted in the premises of assessee and of another person. A statement on oath under Section 132(4) was recorded from that person wherein he admitted to providing cash as accommodating entry to the assessee in lieu of allotment of shares of a private company. Based on this statement, the Assessing Officer framed assessment under Section 153A on the Assessee.

On appeal, the CIT(A) affirmed the Order of Assessing Officer. The Tribunal however reversed the Order of CIT(A) and that of the AO, against which the department filed Appeal before the High Court. Relying on *Principal Commissioner of Income Tax, Delhi* v. *Best Infrastructure (India) P. Ltd.* ([2017] 397 ITR 82) and *Commissioner of Income Tax* v. *Harjeev Aggarwal* (2016 SCC OnLine Del 1512), the High Court held that statements recorded from a third person cannot be a justification for the additions on a stand-alone basis unless supported with corroborative evidences placing reliance. It was also held that if any assessment proceedings are to be initiated on a third person based on any information found during the course of search of any other person, then the proper recourse is under Section 153C and not under Section 153A

of the IT Act. The High Court dismissed the appeals filed by the Revenue department and quashed the search proceedings initiated against the assessee under Section 153A. [*Anand Kumar Jain (HUF)* - TS 105 2021 (Del)]

TDS credit not deniable on ground of non-deposit of tax by deductor

Assessee, a non-resident sold 25% of his shareholding which he had invested in a private company. The assessee received the sale consideration after deduction of applicable TDS. The claimed tax credit was denied for reason that the deductor had failed to deposit the TDS with the State exchequer.

The CIT(A) partly allowed the appeal of the assessee holding that the assessee cannot be treated as 'assessee in default' for non-deposit of TDS into the State exchequer and only the deductor should be considered as 'assessee in default' in terms of provisions of Section 201 of the IT Act. However, the CIT(A) refused to grant credit of TDS to the assessee on the ground that the amount was not even deposited with the Government. Challenging this Order, the assessee went on appeal before the Tribunal.

The Tribunal, relying on a judgement of the High Court of Gujarat in the case of *Devarsh Pravinbhai Patel* v. *ACIT* [dated 24 September 2018] held that the department cannot deny the benefit of tax deducted at source to the assessee as the department has all remedies and even resort to coercive methods to recover TDS from the deductor. [*Jasjit Singh* v. *ITO* - TS 136 ITAT 2021 (Del)]

Deduction under Section 54F available where investment in new property made in the name of widowed daughter

The Assessing Officer denied a deduction by the assessee under 54F of the IT Act on the ground that the property was not purchased in assessee's name but in his widowed daughter's name. Before the Appellant Tribunal, the assessee relied on various judgements of the High Courts and Tribunals to establish the nexus between the sale consideration received and investment made in a new property, particularly placing reliance on *CIT* v. *Natarajan* [(2007) 287 ITR 271 (Mad.)] where the Court had allowed the deduction claimed by the assessee under Section 54F even though the newly invested property was purchased in the name of the wife and *Late Gulam Ali Khan* v. *CIT* [165 ITR 228 (AP)] wherein the Court was of the view that the word 'assessee' must be given a wide and liberal interpretation so as to include the legal heirs also. The Tribunal, following the above decisions allowed the deduction under Section 54F, holding that these beneficial provisions, permitting economic growth, must be interpreted liberally so as to advance the objective of the provisions. The Tribunal noted that in the given case, the assessee invested the sale consideration on transfer of Capital Asset in purchasing new residential property in name of widowed dependent daughter who was also a legal heir. In the circumstances, it was held that the exemption claimed under Section 54F was available. [*Krishnappa Jayaramaiah* v. *ITO* - (2021) 125 taxmann.com 110]

Refund of Fringe Benefit Tax – Petitioner directed to file application before CBDT under Section 119 for refund – HC directs CBDT not to reject application on limitation

The Petitioner, a banking company filed a writ petition before the Madurai Bench of Madras High Court challenging the order passed by the PCIT ('Respondent') which had rejected the application filed by the Petitioner for grant of refund of the fringe benefit tax on the ground of limitation, despite an Order being passed by the

same High Court to consider the application and pass appropriate orders on merits.

The petitioner had filed return of fringe benefits for the AY 2007-08 declaring fringe benefit to the tune of INR 2.87 crore for the contributions made to the superannuation fund. For the previous AY 2006-07, the assessee was contesting this payment of fringe benefit tax before the authorities on the ground that contribution made to a superannuation fund cannot be considered as a perquisite, hence fringe benefit tax cannot be leviable. The Tribunal, on 29 December 2016, passed an order in favour of the Petitioner on this issue. The Petitioner, on obtaining a favourable Order for the past Assessment year filed an application for revision under Section 264 of the Act for grant of refund of the tax paid. The Respondent rejected the application as not maintainable. Aggrieved against the same, the Petitioner filed a writ petition before the High Court and the same was allowed by the Court directing the Respondent to consider the application filed by the Petitioner under Section 264 of the IT Act as an application filed under Section 119 of the Act and pass appropriate orders on merits. However, the Respondent on 7 December 2019, dismissed the Petitioner's request for refund once again on the ground of limitation citing a Circular No 9/2015, dated 9 June 2015 issued by CBDT. Aggrieved against this Order, the Petitioner preferred the present Writ Petition.

The Circular relied upon by the department casted a restriction on all authorities not to entertain an application filed for claim of refund/loss under Section 119 beyond a period of 6 years from the end of the relevant assessment year. The Department argued stating that in the given facts, the Petitioner filed the application under Section 119 on 26 October 2016 which was no doubt beyond 6 years from the end of the relevant assessment year (2007-08). The Department further argued stating that CBDT circulars are binding on the authorities. The Court held that no doubt CBDT circulars are binding on the authorities, but at the same time, the department ought to have shown spirit to the Order of the Court. The High Court further went on to say that when there is no obligation on the part of the assessee to pay fringe benefit tax as held by the Tribunal in assessee's own case for the previous assessment year, even if voluntarily paid, the same has to be returned/refunded to the assessee by the Department.

In the circumstances, the Court held that it being a Constitutional Court, is not bound by the CBDT Circulars. The Writ Petition was allowed permitting the Petitioner to file an application to the CBDT for refund of fringe benefit tax. The Court further elucidated that CBDT must pass orders on merits without referring to the Circular on limitation since as on date, there is no obligation on the part of the Petitioner to pay the fringe benefit tax. [*Karur Vysya Bank* v. *PCIT* - 2021 (2) TMI 763]

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