[2020] 78 ITR (Trib) (S. N.) 33 (Ahmedabad)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — AHMEDABAD "C" BENCH]

DWARKESH INFRASTRUCTURE P. LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

WASEEM AHMED *(Accountant Member)* and
MS. MADHUMITA ROY *(Judicial Member)*

February 20, 2020.

SS ▸ ITA 1961, s 37(1)
AY ▸ 2014-15
HF ▸ Assessee

BUSINESS EXPENDITURE—LABOUR CHARGES—CONTRACT DETAILS EXPLAINING HOW CONTRACTS COMPLETED BY ASSESSEE WITH HELP OF LABOUR CONTRACTORS—LABOUR BILLS AND CONTRACT INDICATING WORK ASSIGNED BY ASSESSEE TO DIFFERENT LABOUR CONTRACTORS—BANK STATEMENT SHOWING PAYMENT THROUGH BANKING CHANNELS TO LABOUR CONTRACTORS—INCURRENCE OF EXPENDITURE DEMONSTRATING BUSINESS PURPOSE—SOME LABOUR CONTRACTORS NOT HAVING COMPLETE KNOWLEDGE OF CONTRACT AND LOOKED AFTER BY THEIR HUSBANDS—NOT A REASON TO DENY CLAIM—INCOME-TAX ACT, 1961, S. 37(1).

In order to claim expenditure under section 37(1) of the Income-tax Act, 1961 the assessee is required to fulfil certain conditions : there must be an expenditure, such expenditure must not be of nature described in sections 30 to 36, expenditure must not be in the nature of capital expenditure or personal expenditure of the assessee, and the expenditure must be laid out or expended wholly and exclusively for the purpose of business or profession. The expression "wholly" employed in section 37 relates to quantification of the expenditure, while the expression "exclusively" refers to the motive, objects and purpose of the expenditure.

The assessee was in the road construction business. During the course of assessment proceedings the Assessing Officer found that the assessee had debited an amount of Rs. 7,00,44,022 being expenditure towards labour charges. The assessee had incurred the expenses on account of labour charges amounting to Rs. 33,43,053 and Rs. 36,82,753. Though clarification was made by the assessee before the Assessing Officer, he held that the contractors as dummy, manipulated by the assessee to inflate the expenditure in the form of labour payments. The Commissioner (Appeals) confirmed this. On appeal :

Held, *that the assessee had demonstrated the incurrence of the expenditure for the purpose of business. It had submitted details to show how these contracts were completed by it with help of labour contractors. The labour bills and contract indicated the working assigned by it to different labour contractors. Bank statements showed payment through banking channels to labour contractors. The income-tax return of the contractor showing income of these receipts received from the assessee. Details of tax deduction at source were produced. Comparative analysis of the gross profit as well as net profit of earlier years vis-à-vis this year was produced. How the profits would abnormally rise if these disallowances were included in the income of the assessee was demonstrated. Thus, complete circumstantial evidence produced by the assessee would indicate that it had incurred these expenditure for completing the work. The only circumstances with the Assessing Officer was that proprietorship concerns of the labour contractors were in the names of ladies and actual work was being looked after by their husbands. These circumstances ought not to be looked into in isolation for disbelieving the claim of the assessee. The receipts had already suffered tax in the hands of the recipients. Work had been done. There was no doubt with regard to the contracts obtained and completion of work. Thus, actual expenditure must have been incurred on such work. The claim of the assessee could not be denied simply for the reason that some of the labour contractors did not have complete knowledge of the contract which was being looked after by their husbands. The Department failed to appreciate the actual circumstances of the dispute.*

Dwarkesh Infrastructure P. Ltd. *v.* Dy. CIT (I. T. A. No. 2813/Ahd/2016 dated October 23, 2018) *followed*.

I. T. A. No. 2283/Ahd/2017 (assessment year 2014-15).

P. B. Parmar, authorised representative, for the assessee.

L. P. Jain, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 78 ITR (Trib) (S. N.) 35 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "D" BENCH]

RAJU DAYAL SAHANI

v.

INCOME-TAX OFFICER

MAHAVIR SINGH *(Vice-President)* and
MANOJ KUMAR AGGARWAL *(Accountant Member)*

February 20, 2020.

SS ▸ ITA 1961, ss 54, 54F
AY ▸ 2011-12
HF ▸ Assessee

CAPITAL GAINS—LONG-TERM CAPITAL GAINS—SHORT-TERM CAPITAL GAINS—ASSESSEE ACQUIRING RIGHTS OF ALLOTMENT IN A SPECIFIC PROPERTY—SUBSEQUENT LETTER AND PREMISES OWNERSHIP AGREEMENT—IMPROVEMENT IN RIGHTS OF ASSESSEE WHICH ALREADY CREATED—DATE OF ACQUISITION OF RIGHT NOT DATE OF REGISTRATION BUT DATE OF ALLOTMENT LETTER—HOLDING OF PROPERTY MORE THAN 36 MONTHS—RESULTANT GAIN LONG-TERM CAPITAL GAINS—ENTITLED TO INDEXATION BENEFIT—WHETHER ASSESSEE ENTITLED TO EXEMPTION ON REINVESTMENT IN NEW FLAT—ASSESSING OFFICER TO EXAMINE—INCOME-TAX ACT, 1961, ss. 54, 54F.

The assessee booked a flat in specie at an agreed consideration of Rs. 79.62 lakhs. The terms of the letter of allotment postulated cancellation of the booking as well as transfer of rights upon certain terms and conditions. Subsequently, the builder issued another letter which recognised the right of the assessee in the property and the builder agreed to reserve the property for allotment subject to certain stipulations and conditions including payment terms. The letter created a right in favour of the assessee to get the allotment of the property in his name subject to certain terms and conditions as agreed upon between the parties. This letter had been issued subject to a premises ownership agreement which was subsequently been executed. The developer had agreed to allot to the purchasers and the purchasers agreed to acquire the property from the developer. This recital recognised the fact that the property was under construction. The assessee subsequently entered into an agreement of transfer. The assessee sold one residential flat for a sale consideration of Rs. 165 lakhs. In his computation of income, the assessee claimed the indexed cost of acquisition by applying the cost inflation index for the financial year 2006-07 and worked out the long-term capital gains at Rs. 51.80

lakhs. Against the gains, the assessee claimed deduction under section 54 of the Income-tax Act, 1961 in view of purchase of another flat which was registered for a sum of Rs. 122 lakhs. Accordingly, the assessee reflected nil long-term capital gains on transfer of the flat. The Assessing Officer held that the resultant gains would be short-term capital gains. Since the assessee acquired the property only on August 6, 2010, the index for the financial year 2010-11 would apply. Further, the letter of allotment would become redundant by the documents registered on August 6, 2010. Since the property was sold within a period of 41 days on September 18, 2010, the nature of capital gains would be short-term capital gains in terms of the definition provided in section 2(42A) and therefore, the benefit of indexation would not be available to the assessee. Consequently, he denied the deduction under section 54 since the deduction would apply only in the case of long-term capital gains. Finally, he computed the short-term capital gains at Rs. 81.25 lakhs. The Commissioner (Appeals) held that the letter envisaged only a reserve of an allotment and was a conditional allotment. Therefore, the letter was not an allotment letter having legal validity to establish rights over the property. Therefore, the allotment letter would not fall into the category of documents which proved that the property was held by the assessee. Consequently, the action of the Assessing Officer was upheld. On appeal :

Held, *that what was acquired by the assessee and what had ultimately been sold by the assessee was in pari materia. Thus the date of acquisition of the right could not be taken as June 22, 2010. The assessee acquired the right on October 14, 2006 which was ultimately sold on September 18, 2010. Therefore, since the holding period of the property was more than 36 months, the resultant gains would be long-term capital gains. Consequently, the benefits of indexation would be available since the financial year 2006-07. The assessee submitted that the assessee's deduction claim would fall under section 54F and not under section 54 since what had been sold was merely a certain right in the property. The facts were brought to the notice of the Commissioner (Appeals) also. Therefore, the alternative claim as made by the assessee under section 54F would be admissible. The Assessing Officer was directed to verify the assessee's claim under section 54F and recompute the income.*

I. T. A. No. 2583/Mumbai/2018 (assessment year 2011-12).

Hari Raheja, authorised representative, for the assessee.

Ms. Jyothilakshmi Nayak, Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 37 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "G" BENCH]

R. G. CONSULTANTS P. LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

(and vice versa)

N. K. BILLAIYA *(Accountant Member)* and
MS. SUCHITRA KAMBLE *(Judicial Member)*

February 20, 2020.

SS ▸ ITA 1961, ss 68, 69
AY ▸ 2011-12
HF ▸ Assessee

UNDISCLOSED CASH—MONEY CHANGER—BUSINESS REQUIREMENTS—CASH BUNDLES CARRYING TAG OF ANOTHER BANK—COMMON PRACTICE—CASH BOOKS WRITTEN DAY-TO-DAY BASIS BUT IN PRACTICE ALWAYS A TIME GAP BETWEEN BOOK ENTRIES—NO DEFECT POINTED OUT BY ASSESSING OFFICER IN BOOKS OF ACCOUNT OF ASSESSEE—ADDITION ON BASIS OF SUSPICION AND SURMISES NOT JUSTIFIED—INCOME-TAX ACT, 1961, S. 69.

CASH CREDIT—UNSECURED LOANS—LENDERS EITHER DIRECTORS OR RELATIVES OF DIRECTORS OF ASSESSEE—ASSESSEE FURNISHING PERMANENT ACCOUNT NUMBER DETAILS, BANK STATEMENTS, CONFIRMATIONS AND COPIES OF INCOME-TAX RETURNS OF LENDERS—NONE OF LENDERS ENTRY PROVIDERS—NO CASH DEPOSITED IN LENDERS' ACCOUNT PRIOR TO ISSUING CHEQUES—ASSESSEE NOT PURCHASING CHEQUE BY PAYING CASH—ADDITION UNSUSTAINABLE—INCOME-TAX ACT, 1961, S. 68.

Information was received from the police authorities that two persons were caught by them with two bags which contained unexplained cash of Rs. 1 crore. The two persons were employees of the assessee and the bags belonged to the assessee. The director of the assessee was called to the spot. Pursuant to this, survey operation under section 133A of the Income-tax Act, 1961 was carried to verify the source of Rs. 1 crore found and retained by the police authorities. The Assessing Officer observed that no proper books of account were available at the office premises. The director claimed that the cash seized by the police was duly recorded in the books of account and, accordingly, the Assessing Officer asked the assessee to produce the books of account. The Assessing Officer was of the firm belief that Rs. 1 crore found and seized was never disclosed in the books of account. The cash withdrawn from the bank amounted to Rs. 81.50 lakhs. The cash had been withdrawn in tranches.

Another reason for disbelieving the assessee's contention was that the bundles of notes contained the slips of PNB wherein the claim was withdrawal from HDFC Bank. The Assessing Officer made addition of Rs. 1 crore on account of unexplained cash under section 69. The Commissioner (Appeals) confirmed the addition. On appeal :

Held, *that the assessee was an authorised money changer. This line of business required availability of cash in huge amounts as persons give dollars to be exchanged in Indian currency. Considering the exchange rate, the assessee had to carry heavy cash. The fact that the cash bundles carried the tag of PNB should not be given weightage inasmuch as it was a common practice amongst all banks to issue currency bundles as received by them. Moreover, once a bundle of currency carried the tag of another bank, the issuing bank need not count it again. Though the cash books were written on day-to-day basis in practice there was always a time gap between the book entries. Books were lying with the chartered accountant which had also been verified by the Assessing Officer and when during the course of assessment proceedings the books were produced, not a single defect had been pointed out by the Assessing Officer in the books of account of the assessee. The entire addition had been made on the basis of suspicions and surmises and such addition could not be sustained.*

The Assessing Officer found that a sum of Rs. 2.56 crores had been taken as unsecured loan from the directors and their relatives. The assessee was asked to justify the unsecured loans in the light of the provisions of section 68. The assessee submitted all the bank statements with copies of confirmations. The assessee was asked to produce all the creditors personally but the assessee produced only one person. The Assessing Officer held that the assessee had failed to discharge the initial onus cast upon it by the provisions of section 68 and made addition of Rs. 2.56 crores under section 68. The Commissioner (Appeals) deleted the addition. On appeal :

Held, *that all the lenders were either directors or relatives of the directors. The assessee had furnished permanent account numbers details, bank statements, confirmations and copies of income-tax returns of the lenders. None of the lenders was alleged to be an entry provider. They have given loans to the assessee out of their available balances and it was not the case of the Department that prior to issuing cheques, there was a deposit of cash in the lender's bank account. Therefore, the assessee had not purchased cheques by paying cash.*

I. T. A. Nos. 2515 and 4335/Delhi/2015 (assessment year 2011-12).

Ved Jain, Advocate, *Ashish Goel*, Chartered Accountant, and *Ms Umang Luthra*, Advocate, for the assessee.

H. K. Charudhari, Commissioner of Income-tax-Departmental representative, and *Saras Kumar*, Senior Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 39 (Indore)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — INDORE BENCH]

SARWAR MOHD. KHAN

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

KUL BHARAT *(Judicial Member)* and
MANISH BORAD *(Accountant Member)*

February 20, 2020.

SS ▸ ITA 1961, ss 147, 148
AY ▸ 2008-09
HF ▸ Assessee

REASSESSMENT—SCOPE OF PROCEEDINGS—ASSESSING OFFICER NOT MAKING ANY ADDITION ON ITEMS OF INCOME FORMING GROUNDS FOR NOTICE—ADDITION MADE IN REASSESSMENT ALREADY MADE IN ORIGINAL ASSESSMENT PROCEEDINGS—REASSESSMENT NOT VALID—INCOME-TAX ACT, 1961, SS. 147, 148.

The assessee was an individual earning income from other sources and declared an income of Rs. 23,80,135 for the assessment year 2008-09. The Assessing Officer made an addition of Rs. 39.40 lakhs on account of long-term capital gains. Penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 for concealment of income were also initiated. The case was reopened by issuance of notice under section 148 to the assessee. In response to the notice the assessee declared the same income as in the original return. The assessment was completed on an income of Rs. 63,20,140. The Commissioner (Appeals) confirmed the reassessment. On appeal :

Held, *that no addition was made by the Assessing Officer in the reassessment proceedings for the reasons recorded in the notice issued under section 148. If after issuance of notice under section 148 the Assessing Officer accepts the contentions of the assessee and holds that the income which he initially*

formed a reason to believe had escaped assessment, had as a matter of fact not escaped assessment, it was not open to him independently to assess some other income. The assessment order was illegal since the Assessing Officer had not made any addition on the "reasons to believe" recorded in the notice issued under section 148 and had himself so admitted because the early withdrawal of the amount deposited in the capital gains account before the expiry of the time period provided under section 54F had been offered to tax by the assessee and shown as income for the assessment year 2011-12. Further the addition of Rs. 39.40 lakhs made in the reassessment proceedings had already been made during the course of the original assessment proceedings.

CIT *v.* Jet Airways (I.) Ltd. [2011] 331 ITR 236 (Bom), Ranbaxy Laboratories Ltd. *v.* CIT [2011] 336 ITR 136 (Delhi) *and* Dipti Mehta *v.* ITO (I. T. A. No. 2032/Kol/2018 dated March 1, 2019) *followed*.

I. T. A. No. 511/Indore/2018 (assessment year 2008-09).

S. S. Solanki, Chartered Accountant, for the assessee.

Lal Chand, Commissioner of Income-tax, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 40 (Delhi)

[Before the Income-tax Appellate Tribunal — Delhi "B" Bench]

DEEPAK GARG

v.

INCOME-TAX OFFICER

Prashant Maharishi *(Accountant Member)* and
K. Narasimha Chary *(Judicial Member)*

February 19, 2020.

SS ▸ ITA 1961, ss 28, 41(1)
AY ▸ 2012-13
HF ▸ Assessee

Business income—Benefit or amenity arising from business—Remission or cessation of trading liability—Assessee's father leaving behind legal heirs and gold bars—Assessee introducing gold left behind by his father into his business and showing trade liability in his name and in name of other family as a whole or individual legal heir—Assessing Officer accepting purchase of gold and approving trading results—Not a case of assessee introducing unaccounted or unexplained money into

CAPITAL OR OF TRADE LIABILITY CEASING TO EXIST—INCOME-TAX ACT, 1961, SS. 28, 41(1).

The assessee was in the business of trading in bullion and all types of gold and diamond jewellery. For the assessment year 2012-13, he pleaded before the Assessing Officer that his father had died intestate on May 15, 1993 leaving behind five legal heirs and some gold bars. The assessee commenced his business in the latter half of the financial year 2010-11 relevant to the assessment year 2011-12 with a view to utilise the gold bars and ornaments left behind by his father. He passed a general entry on February 4, 2012 admitting the purchase amount by Rs. 5 lakhs and crediting it to a separately opened ledger account in the name of his father. During the financial year 2011-12, he purchased gold ornaments, etc. worth Rs. 40 lakhs by crediting a corresponding amount of Rs. 40 lakhs to the ledger account opened in his name under legal advice since the gold did not belong to him exclusively but equally to other legal heirs of his father. The Assessing Officer made addition of Rs. 45 lakhs on account of sundry creditors. The Commissioner (Appeals) confirmed the addition of Rs. 40 lakhs out of Rs. 45 lakhs. On appeal :

Held, *that the Assessing Officer accepted the purchase of gold and approved the trading results. Having accepted the trading results, it was not open for the Assessing Officer to say that the assessee introduced unexplained and unaccounted money into the capital. Inasmuch as the other legal heirs were available and the debt was acknowledged in the books of account of the assessee, it could not be said that the liability ceased to exist. It could not be said that such a liability ceased to exist on the death of the assessee's father because the father of the assessee died in the year 1993 and the introduction of gold of father into the business of the assessee took place in the assessment years 2011-12 and 2012-13 only. Unless the benefit accrued to the assessee is in nature of cash or money, section 28 of the Income-tax Act, 1961 had no application and in the absence of cessation of liability, section 41(1) had no application. All that had happened was that the assessee had introduced the gold left behind by his father into his business and shown the trade liability in his own name in the name of other family as a whole or individual legal heir. Such an act could not be termed either as introduction of unaccounted or unexplained money into the capital nor could the trade liability be said to have ceased to exist. Thus the addition under section 28 read with section 41 could not be sustained.*

COMMISSIONER *v.* MAHINDRA AND MAHINDRA LTD. [2018] 404 ITR 1 (SC) *applied*.

I. T. A. No. 3175/Delhi/2017 (assessment year 2012-13).

Lalit Mohan, Chartered Accountant, for the assessee.

Ms. Ashima Neb, Senior Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 42 (Chennai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHENNAI "D" BENCH]

AVM PRODUCTIONS

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. R. S. GANESAN *(Judicial Member)* and
S. JAYARAMAN *(Accountant Member)*

March 4, 2020.

SS ▸ ITA 1961, s 32
AY ▸ 2011-12, 2014-15
HF ▸ Department

DEPRECIATION—COST OF CONSTRUCTION OF OFFICE BLOCK—COMPENSATION PAID FOR EASEMENT RIGHTS NOT ACCEPTED BY TRIBUNAL IN EARLIER YEARS—HIGH COURT ADMITTING ASSESSEE'S APPEAL AGAINST TRIBUNAL NOT A REASON TO TAKE A VIEW IN FAVOUR OF ASSESSEE—ASSESSEE NOT ENTITLED TO DEPRECIATION—INCOME-TAX ACT, 1961, S. 32.

The assessee added an amount of Rs. 3 crores claimed to have been paid to B, to the cost of construction of its office building block contending that B had filed a writ petition before the High Court objecting to the construction raised by the assessee and obtained stay against the construction and withdrew from the proceedings only after receiving an amount of Rs. 3 crores from the assessee. The assessee's version was that without payment of the Rs. 3 crores its construction could not have been raised. The Tribunal for earlier years had held that in the petition the assessee's name was nowhere mentioned. Thereafter, the parties entered into a compromise wherein the assessee paid Rs. 3 crores to B through bankers' cheque. But in the memorandum no mention qua the proof of payment in the terms of compromise note, it could not be accepted the contention that the assessee had made any payment to B. The Tribunal held that no payment had been made by the assessee to B. The authorities

relying on the order of the Tribunal in the assessee's case disallowed the claim of depreciation for the assessment years 2011-12 and 2014-15. On appeal :

Held, *that the assessee had not filed any order of the High Court having modified or reversed the decision of the Tribunal in the assessee's case. Just because the High Court had admitted the appeals filed by the assessee, the Tribunal could not take a different view in the present appeals filed by the assessee.*

I. T. A. No. 3131 and 3132/Chennai/2018 (assessment year 2011-12 and 2014-15).

R. Visvanathan, Chartered Accountant, for the assessee.

AR. V. Srinivasan, Joint Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 43 (Bangaluru)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — BENGALURU "A" BENCH]

PRAGNYA CREST PROPERTIES PVT. LTD.

(earlier known as Habitat Pragnya Property Pvt. Ltd.)

v.

DEPUTY COMMISSIONER OF INCOME-TAX

PRADIP KUMAR KEDIA *(Accountant Member)* and
SMT. BEENA PILLAI *(Judicial Member)*

March 3, 2020.

SS ▸ ITA 1961, s 37
AY ▸ 2012-13
HF ▸ Assessee

BUSINESS EXPENDITURE—REAL ESTATE DEVELOPMENT—SELLING AND ADMINISTRATIVE COSTS—EXPENSES INCURRED IN NORMAL COURSE OF BUSINESS ALLOWABLE AFTER SETTING UP OF BUSINESS ALTHOUGH REVENUE NOT YET EARNED—SELLING EXPENSES ALLOWABLE—INCOME-TAX ACT, 1961, S. 37—ACCOUNTING STANDARD 7.

The assessee was in the business of real estate development and construction of commercial and residential building. It entered into two agreements : agreement to sell and construction agreement. Possession of the apartment would be given to customers on completion of the construction. According to

the accounting policy adopted, the revenue from real estate under development was recognised upon transfer of all significant risks and rewards of ownership of such real estate in terms of the contract entered into with buyers. For contracts under which the assessee was under obligation to perform substantial acts, even after the transfer of significant risk and rewards, the revenue was recognised on the percentage of completion method when the state of completion of each project reached a reasonable level of progress. The Assessing Officer observed that the assessee had claimed selling expenses of Rs. 1,38,22,515 in the previous year relevant to the assessment year 2012-13 as revenue expenses. The assessee had not recognised any revenue from sale of units in the year 2012-13. The assessee was in the development of a single project where the sales had been recognised only in the subsequent years. The selling expenses were mostly comprised of advertising expenses of the project. In the absence of any revenue recognised from the project, the Assessing Officer applied the doctrine of matching principle holding that only those expenses relatable to sales revenue recognised in a year could be claimed as revenue expenses. The Assessing Officer held that selling expenses claimed as revenue expenditure required to be capitalised with the project cost and could not be regarded as expenditure of revenue nature. The selling expenses were thus disallowed by the Assessing Officer. The Commissioner (Appeals) confirmed the action of the Assessing Officer.

Held, *that Accounting Standard 7 provides that the selling and administrative costs are required to be excluded from the contract costs while drawing financial statements. Hence, the action of the assessee was in line with the parameters of Accounting Standard 7. Expenses incurred in the normal course of business are required to be allowed after setting up of business irrespective of whether the revenue was earned. The action of the assessee in any case was a revenue neutral affair and the Revenue was not put to any tax loss per se by such premature claim.*

Sunny Vista Realtors Pvt. Ltd. *v.* Asst. CIT (I. T. A. No. 4580/Mum/2013 dated January 11, 2017) *followed*.

I. T. A. No. 1576/Bang/2017 (assessment year 2012-13).

Sathyanarayanamurthi, Chartered Accountant, for the assessee.

B. R. Ramesh, Joint Commissioner of Income-tax, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 78 ITR (Trib) (S. N.) 45 (Ahmedabad)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — AHMEDABAD "D" BENCH]

DEEM ROLL-TECH LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

RAJPAL YADAV *(Vice-President)* and
T. S. KAPOOR *(Accountant Member)*

March 3, 2020.

SS ▸ ITA 1961, s 271(1)(c)
AY ▸ 2011-12
HF ▸ Assessee

PENALTY—CONCEALMENT OF INCOME—FURNISHING INACCURATE PARTICULARS OF INCOME—DISALLOWANCE OF INTEREST EXPENSES—SUFFICIENT INTEREST-FREE FUNDS AVAILABLE WITH ASSESSEE AGAINST WHICH IT ADVANCED MEAGRE AMOUNT ON WHICH NOT CHARGED INTEREST—INTEREST EXPENSES NOT DISALLOWABLE—OPINION ON PART OF ASSESSING OFFICER THAT ASSESSEE DIVERTED INTEREST BEARING FUNDS TO INTEREST-FREE ADVANCES IGNORING FACT THAT ASSESSEE HAD HUGE INTEREST-FREE RESERVES—MERE WRONG CLAIM NOT TANTAMOUNT TO FURNISHING OF INACCURATE PARTICULARS OF INCOME OR CONCEALMENT OF INCOME—PENALTY NOT LEVIABLE IN SUCH CASES—INCOME-TAX ACT, 1961, s. 271(1)(c).

The Assessing Officer made three additions : (i) Rs. 35 lakhs on account of new share capital ; (ii) Rs. 1,51,697 disallowance out of interest expenses and (iii) Rs. 12,020 disallowance out of interest. He further imposed penalty of Rs. 12,05,630 at 300 per cent. on the income on which tax was sought to be evaded. The Commissioner (Appeals) relied on the Tribunal's decision in favour of the assessee in respect of share capital and deleted the penalty. However, he confirmed the penalty on account of disallowance out of interest expenses. On appeal :

Held, *that sufficient interest-free funds were available with the assessee against which it had advanced a meagre amount on which it had not charged interest. Therefore, the interest was not disallowable. Moreover, the Assessing Officer had worked out the disallowance only on the basis of documents filed by the assessee in the form of balance-sheet and the profit and loss account. It was only a case of opinion on the part of the Assessing Officer that the assessee had diverted interest bearing funds to interest-free advances ignoring the*

fact that the assessee had huge interest-free reserves. The penalty was imposed by calculating notional interest on interest-free advances. The assessee had not concealed any particulars of income. Even if the assessee had made a wrong claim a mere wrong claim could not amount to furnishing of inaccurate particulars of income or concealment of income. The penalty was not sustainable.

CIT *v.* RELIANCE PETROPRODUCTS PVT. LTD. [2010] 322 ITR 158 (SC) *applied*.

I. T. A. No. 1989/Ahd/2018 (assessment year 2011-12).

P. F. Jain, authorised representative, for the assessee.

Vinod Tanwani, Senior Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 46 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "A" BENCH]

ASSISTANT COMMISSIONER OF INCOME-TAX

v.

AMARTARA P. LTD.

SHAMIM YAHYA *(Accountant Member)* and
C. N. PRASAD *(Judicial Member)*

March 2, 2020.

SS ▶ ITA 1961 ss 14A, 43(5), 50C
AY ▶ 2010-11, 2014-15
HF ▶ Assessee

CAPITAL GAINS—LONG-TERM CAPITAL GAINS—TRANSFER OF ASSET BY PARTNER TO FIRM AS CAPITAL CONTRIBUTION—FULL VALUE OF CONSIDERATION—AMOUNT RECORDED IN BOOKS OF ACCOUNT OF FIRM DEEMED TO BE FULL VALUE OF CONSIDERATION—DEEMING FICTION PROVIDED IN SECTION 50C CANNOT BE EXTENDED TO COMPUTE FULL VALUE—ONE DEEMING SECTION CANNOT BE EXTENDED BY IMPORTING ANOTHER DEEMING SECTION—INCOME-TAX ACT, 1961, ss 43(5), 50C.

INCOME—DISALLOWANCE OF EXPENDITURE IN EARNING EXEMPT INCOME—INVESTMENTS NOT GENERATING ANY INCOME—DISALLOWANCE OF INTEREST COMPONENT ON BORROWED FUNDS UTILISED FOR MAKING INVESTMENTS CANNOT BE MADE—INCOME-TAX ACT, 1961, s. 14A.

The assessee transferred its land to a partnership in which it was one of the partners. The plot was transferred as capital contribution of the assessee. The consideration for the property was Rs. 5 crores. The assessee claimed the indexed cost of acquisition at Rs. 9,49,22,008 declared a long-term capital loss of Rs. 4,49,22,008 on transfer of its land to the firm. The Assessing Officer observed that the value of the land for the proposes of stamp duty as apparent from the relevant agreement submitted by the assessee was Rs. 9,77,32,000. He worked out the long-term capital gains at Rs. 28,09,992 as against long-term capital loss computed by the assessee at Rs. 4,49,22,008. He substituted the value under the provision of section 50C of the Income-tax Act, 1961 and made an addition of Rs. 96,31,700 as against the long-term capital gains computed by the assessee at Rs. 5,94,57,338 for the assessment year 2014-15. The Commissioner (Appeals) referred to the order of the Tribunal in the assessee's case and decided the issue in favour of the assessee. On appeal :

Held, *that section 45(3) comes into operation only in special cases of transfer between a partnership and its partners and in such circumstances, the amount recorded in the books of account of the firm shall be taken as full value of consideration. Since the Act provides for deeming consideration to be adopted for the purpose of section 48 another deeming fiction provided by way of section 50C cannot be extended to compute the deemed full value of consideration as a result of transfer of a capital asset. Thus where profits or gains arise from the transfer of a capital asset by a partner to a firm in which he is or becomes a partner by way of capital contribution, then for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be the full value of consideration received or accruing as a result of transfer of a capital asset. The Assessing Officer could not import another deeming fiction created for the purpose of determination of full value of consideration as a result of transfer of a capital asset by importing the provisions of section 50C.*

DY. CIT *v.* AMARTARA P. LTD. (I. T. A. No. 6050/Mumbai/2016 dated December 29, 2017) *followed.*

The Commissioner (Appeals) held that the disallowance under section 14A should be limited to the exempt income earned. He upheld the disallowance only to the extent of exempt income earned. On appeal :

Held, *that when the investments have not generated any income, no disallowance on account of interest component on borrowed funds which were utilised for making the investments could be made.*

Dy. CIT *v.* Amartara P. Ltd. (I. T. A. No. 6050/Mumbai/2016 dated December 29, 2017) *followed.*

I. T. A. Nos. 6181 and 5569/Mumbai/2018 (assessment years 2010-11 and 2014-15).

Michael Jerald for the Department.

None appeared for the assessee.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 48 (Chennai)

[Before the Income-tax Appellate Tribunal — Chennai "C" Bench]

PAUL XAVIER ANTONYSAMY

v.

INCOME-TAX OFFICER

Mahavir Singh *(Vice-President)* and
M. Balaganesh *(Accountant Member)*

February 28, 2020.

SS ▸ ITA 1961, s 6(1), *Expln 1(a)*
AY ▸ 2015-16
HF ▸ Assessee

Double taxation relief—Residence—Period of stay in India—Treaty provisions applicable both resident and non-resident—Assessee employed in India and seconded on overseas assignment for purpose of employment—Assessee staying in India for 151 days—Assessee qualified as non-resident in India—Treaty provision treating salary income taxable in country of residence—Salary received for period in respect of services rendered by him abroad—Not taxable in India—Income-tax Act, 1961, s. 6(1), *Expln.* 1(a)—Double Taxation Avoidance Agreement between India and Australia, art. 15—Circular No. 13 of 2017 dated 11-4-2017[1].

The assessee was an individual, employed in GEII India. He was seconded by GEII India on an overseas assignment for the purpose of employment with GEII Australia during the year 2015-16. He stayed in India for 151 days and left India for employment on August 30, 2014. Accordingly, he qualified as a non-resident of India in accordance with Explanation 1(a) *to section 6(1) of*

1. see [2017] 393 ITR (St.) 91.

the Income-tax Act, 1961. He filed a return in the capacity of non-resident for the assessment year 2014-15 admitting the salary income received by him in India for the period April 1, 2014 to August 30, 2014. The salary income received in Australia was claimed as not taxable in India in view of the fact that services were rendered by the assessee in Australia, although monies therefor were paid by GEII India into the bank account of the assessee in India.The salaries for the period August 31, 2014 to March 31, 2015 were paid by GEII India to the assessee by crediting the bank account of the assessee in India after duly subjecting the salaries to deduction of tax at source. Hence, the salary was included in form 16 of the assessee. The salary paid to the assessee from August 31, 2014 to March 31, 2015 was later reimbursed to GEII India by GEII Australia on the ground that the salary cost to the employee should be absorbed as expenditure only in the books of GEII Australia. The assessee claimed exemption under article 15(1) of the Double Taxation Avoidance Agreement between India and Australia in respect of the salary income received for the period August 31, 2014 to March 31, 2015 in the sum of Rs. 39,20,337. On appeal :

Held, *that the benefit of the Agreement shall be applicable to persons, who are residents of both India as well as Australia. Hence, the contention of the Department that the assessee being a non-resident and hence treaty benefit could not be extended to the assessee was incorrect. Article 15 categorically mentioned that salary income shall be taxable only in Australia, in the case of an individual, who is a resident of Australia. The assessee was a resident of Australia and non-resident of India during the year 2014-15. Hence, the assessee would be entitled to the benefit of article 15 of the Agreement under which salary income of a resident of Australia is taxable only in Australia. Therefore the salary earned by the assessee in respect of services rendered in Australia for the period August 31, 2014 to March 31, 2015 was taxable only in Australia (this is also duly offered to tax by the assessee in Australia as evident from Australian tax return filed by the assessee) and not in India.*

SWAMINATHAN RAVICHANDRAN *v.* ITO (I.T.) (I. T. A. No. 299/Mds/2016 dated August 5, 2016) *distinguished*.

DIT (INTERNATIONAL TAXATION) *v.* PRAHLAD VIJENDRA RAO [2018] 11 ITR-OL 241 (Karn), CIT *v.* AVTAR SINGH WADHWAN [2001] 247 ITR 260 (Bom) *and* SUMANABANDYOPADHYAY *v.* DY. DIT (INTERNATIONAL TAXATION) TS-281-H.C 2017 (Cal) *followed*.

I. T. A. No. 2233/Chennai/2018 (assessment year 2015-16).

Ashik Shah, Chartered Accountant, for the assessee.

Ms.Vijaya Prabha, Joint Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 50 (Chennai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHENNAI "A" BENCH]

K. GURUMURTHY

v.

INCOME-TAX OFFICER

N. R. S. GANESAN *(Judicial Member)* and
RAMIT KOCHAR *(Accountant Member)*

February 27, 2020.

SS ▸ ITA 1961, ss 147, 148
AY ▸ 2011-12, 2012-13
HF ▸ Assessee

APPEAL TO APPELLATE TRIBUNAL—REASSESSMENT—RECONSTRUCTION OF RECORDS AFTER FLOODS—NO SPECIFIC DEFICIENCIES POINTED OUT BY AUTHORITIES IN CASH AND BANK BOOKS BUT GENERALISED ADVERSE COMMENTS MADE—ASSESSEE EXPLAINING SOURCES OF CASH DEPOSITS THROUGH CASH AND BANK BOOKS BY WAY OF WITHDRAWALS FROM BANKS, RENT, PARTNER REMUNERATION FROM FIRM—ASSESSING OFFICER TO GO THROUGH RECORDS AND TO POINT OUT SPECIFIC DEFECTS AND ESCAPEMENT OF INCOME—INCOME-TAX ACT, 1961, SS. 147, 148.

The assessee was a senior citizen and claimed to be a freedom fighter running a gas agency during the year 2012-13. The assessee filed his return originally with the Assessing Officer for the assessment year 2011-12 but did not file a return for the assessment year 2012-13. The case of the assessee was reopened within four years under sections 147 and 148 of the Income-tax Act, 1961 for both the assessment years 2011-12 and 2012- 13. The assessee could not produce the books of account and other documents or records during assessment proceedings owing to floods in Chennai in December, 2015 as it was claimed that records and documents were damaged in floods. The assessment was completed in March 2016 by the Assessing Officer for the assessment years. The factum of damage to records in floods in Chennai was later

proved to be correct as accepted by the Assessing Officer in the remand report. The assessee during the appellate proceedings conducted by the Commissioner (Appeals) filed reconstructed records including cash books, bank books, etc. but the Commissioner (Appeals) dismissed the appeals filed by the assessee for both the assessment years. The assessee filed three rectification petitions under section 154 before the Commissioner (Appeals). The first two were dismissed by the Commissioner Appeals) as the petitions were filed manually while the third rectification petition under section 154 was e-filed which was later adjudicated by the Commissioner (Appeals) on the merits. The Commissioner (Appeals) called for a remand report from the Assessing Officer wherein the Assessing Officer accepted the contention of the assessee that it was due to floods in Chennai the assessee could not produce his record. The Commissioner (Appeals) observed that the source for cash deposits were not explained with the cogent evidence. On appeal :

Held, *that the assessee had tried to explain the sources of cash deposits before the Tribunal through cash and bank books filed before the Tribunal by way of withdrawals from banks, rent, partner remuneration from firm, etc. which needed verification. No specific deficiencies were pointed out by the authorities in the cash and bank books while generalised adverse comments were made by the authorities. There was a need for verification of cash and bank books entries vis-à-vis the cash deposits and co-relation with income declared by the assessee before the Department in the return filed and consequently due taxes paid to the Department on such income claimed to be the sources of deposits. Thus for this limited verification the matter was remanded to the Assessing Officer for both the years. The Assessing Officer was directed to go through the records produced by the assessee and to point out specific defects or escapement of income leading to culmination of income which had escaped assessment and which needed to be brought to tax in the hands of the assessee instead of making generalised comments.*

I. T. A. Nos. 2921 and 2922/Chennai/2018 (assessment years 2011-12 and 2012-13).

N. Viswanathan, Advocate, for the assessee.

A. R. V. Sreenivasan, Joint Commissioner of Income-tax, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 78 ITR (Trib) (S. N.) 52 (Visakhapatnam)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — VISAKHAPATNAM "SMC" BENCH]

INCOME-TAX OFFICER

v.

PAKKI PRABHAKAR RAO AND OTHERS

V. DURGA RAO *(Judicial Member)*

February 28, 2020.

SS ▸ ITA 1961, s 45(5A)
AY ▸ 2009-10
HF ▸ Assessee

CAPITAL GAINS—COST OF CONSTRUCTION—AREA-SHARING AGREEMENT—DEVELOPER GIVING CERTAIN PRE-AGREED CONSTRUCTED AREA TO LAND OWNER IN CONSIDERATION FOR LAND OWNER ALLOWING CONSTRUCTION ON ITS LAND—LAND OWNER REQUIRED TO PAY TAX ON CAPITAL GAINS AT TIME OF ENTERING INTO DEVELOPMENT AGREEMENT AND GIVING POSSESSION OF LAND TO DEVELOPER FOR CONSTRUCTION—CONSIDERATION TO LANDLORD WOULD BE COST OF CONSTRUCTION TO DEVELOPER—INCOME-TAX ACT, 1961, S. 45(5A).

The assessee declared a total income of Rs. 50,516 as capital gains. The Assessing Officer assessed the capital gains at Rs. 7,64,090. Subsequently, he issued a notice under section 148 of the Income-tax Act, 1961 on the ground that under a development agreement with the developer for development of the property on sharing system for construction of residential and commercial apartments, the assessee along with the two brothers had received total extent of 13700 square feet built-up area towards their half portion of share in the complex in lieu of exchange of 413 square yards and the sale consideration for exchange of 413 square yards of land was Rs. 1,33,39,900 as per the value of Sub-Registrar and accordingly the capital gains at Rs. 27,81,371 were to be computed as against the taxable capital gains computed at Rs. 7,64,090. In reply, the assessee submitted that the cost of construction to the developer formed part of the full value of consideration in the case of development agreement. The Assessing Officer did not agree with the explanation of the assessee and calculated the capital gains adopting the rate of 32,300 per square yard according to the Sub-Registrar's value. The Commissioner (Appeals) held that deemed consideration to the landlord would be the cost of construction to the developer and directed the Assessing Officer to adopt the consideration as cost of construction to the developer. On appeal :

Held, *that under the development agreement the developer was to give a certain pre-agreed constructed area to the land owner in consideration for the land owner allowing the construction on his land. The land owner was required to pay tax on the capital gains arising on the transfer of land at the time of entering into the development agreement and giving possession of the land to the developer for construction thereon, while he would receive the consideration in the form of constructed area. Hence the consideration to the landlord would be the cost of construction to the developer. Section 45(5A) was introduced by the Finance Act, 2017 effective from the assessment year 2018-19, prescribing the taxability of area-sharing arrangement under a development agreement in the hands of the land owner, according to which the cost of acquisition of the share in the project being land or building or both, in the hands of the land owner shall be the stamp duty value which was to be the deemed full value of consideration. Hence, it could be presumed that prior to the amendment, the deemed consideration to the landlord would be the cost of construction to the developer. Thus the Assessing Officer had to adopt the cost of construction in the hands of the developer to ascertain the capital gains.*

I. T. A. Nos. 445 to 447/Vizag/2019 (assessment year 2009-10).

B. Rama Krishna, Senior Departmental representative, for the Department.

N. S. S. H. Bhaskar, Chartered Accountant, for the assessee.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 53 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "E" BENCH]

MEENU KAPOOR

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

BHAVNESH SAINI *(Judicial Member)* and
PRASHANT MAHARISHI *(Accountant Member)*

February 25, 2020.

SS ▸ ITA 1961, s 68
AY ▸ 2016-17
HF ▸ Assessee

CASH CREDITS—UNSECURED LOANS—ASSESSEE PRODUCING SUFFICIENT DOCUMENTARY EVIDENCE ON RECORD TO PROVE IDENTITY OF CREDITORS,

THEIR CREDITWORTHINESS AND GENUINENESS OF TRANSACTION—ASSESSING OFFICER NOT MAKING ANY ENQUIRY WITH REGARD TO ASSET AND AMOUNT HELD BY CREDITORS IN THEIR BANK ACCOUNTS WITH THEIR SOURCE—ASSESSING OFFICER COULD NOT DRAW ANY ADVERSE INFERENCE AGAINST ASSESSEE—ASSESSEE NEED NOT PROVE SOURCE OF SOURCE—NO UNEXPLAINED CREDITS IN HANDS OF ASSESSEE—INCOME-TAX ACT, 1961, S. 68.

The assessee derived income from house property and interest from the bank and bonds. In the year under 2016-17 she purchased a property and paid Rs. 11,65,50,100. The source of the funds for purchase of property was unsecured loans taken from various related and unrelated parties. All these loans were given interest-free to the assessee, except one party which made an interest provision at nine per cent. per annum. The total loan was in a sum of Rs. 10,20,45,840 from five parties. The Assessing Officer noted from the details on record that the amounts credited by these parties were highly disproportionate to their returned incomes. While the assessee's income was only Rs. 30 lakhs she had made investment of Rs. 11.65 crores from loans and she had not explained how she was going to repay the loans or whether she had capacity to repay them. The Assessing Officer noted that the assessee had no capacity to take such huge loans and no capacity to purchase residential property of more than Rs. 11 crores from unaccounted sources of income. The Assessing Officer noted that the onus was not discharged just by providing confirmations, acknowledgment of income-tax returns and bank statements, if no known sources of funds proportionate to the loan advanced were visible from the documents submitted. He held that these were unexplained loans and made an addition of Rs. 10,20,45,840. The Commissioner (Appeals) upheld the addition under section 68 of the Income-tax Act, 1961. On appeal :

Held, *that the assessee explained that the loan amount was taken from the five parties for purchase of property, out of which, four creditors were family members and related concerns of the assessee. The assessee filed confirmation of accounts from all these creditors supported by income-tax returns, permanent account numbers, bank statements and computation of income, statements of financial assets and details and source of funds received by them. Mostly, the source of deposits was their matured fixed deposits and sale of properties. All these creditors had sufficient funds in their bank accounts to give loans to the assessee. No cash was found deposited in the accounts of the creditors before giving loans to the assessee. The assessee was not required to explain why interest was not paid on loan to the family concern. It was a settlement between the family members whether to charge interest or not. The*

Assessing Officer could not dictate terms to the assessee and her family members in this regard. The Assessing Officer did not doubt the identity of the creditors and their creditworthiness. The Assessing Officer merely doubted the genuineness of the transaction because of the disproportionate income of the creditors as regards the loans advanced to the assessee. In case Assessing Officer had any doubt on any point, he could have summoned all the creditors and recorded their statements on oath to find out the truth. Since all the creditors had sufficient funds in their bank accounts and they had confirmed giving loans to the assessee, the initial burden upon the assessee to prove all the three ingredients of section 68, i. e., identity of the creditors, their creditworthiness and genuineness of the transaction, was discharged, particularly when all the creditors were assessed to tax and the transactions were routed through banking channels only. The Assessing Officer did not make any enquiry into the matter on the documentary evidence furnished by the assessee and merely rejected the claim of the assessee on irrelevant reasons that the creditors had income disproportionate to the loans advanced to the assessee. The Assessing Officer failed to examine the creditworthiness of the creditors from the source explained in their bank accounts. Since no further investigation had been carried out by the Assessing Officer on the documentary evidence filed by the assessee, the Assessing Officer could not fasten the assessee with such liability under section 68. The Assessing Officer failed to carry his suspicion to logical conclusion by further investigation. Therefore, the Assessing Officer could not draw any adverse inference against the assessee. In the law the assessee need not prove source of the source.

CIT *v.* KAMDHENU STEEL AND ALLOYS LTD. [2014] 361 ITR 220 (Delhi), CIT *v.* WINSTRAL PETROCHEMICALS P. LTD. [2011] 330 ITR 603 (Delhi), CIT *v.* VALUE CAPITAL SERVICES PVT. LTD. [2008] 307 ITR 334 (Delhi), CIT *v.* ORISSA CORPORATION P. LTD. [1986] 159 ITR 78 (SC), DY. CIT *v*, ROHINI BUILDERS [2002] 256 ITR 360 (Guj) P. K. SETHI *v.* CIT [2006] 286 ITR 318 (SC), CIT *v.* DWARKADHISH INVESTMENT P. LTD. [2011] 330 ITR 298 (Delhi) *and* ZAFA AHMED AND CO. *v*. CIT [2013] 30 taxmann.com 267 (All) *followed*.

I. T. A. No. 8333/Delhi/2019 (assessment year 2016-17).

R. K. Singhal, Chartered Accountant, for the assessee.

Ms. Pramita M. Biswas, Commissioner of Income-ax-Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 56 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "E" BENCH]

ADDITIONAL COMMISSIONER OF INCOME-TAX

v.

NATIONAL RESEARCH DEVELOPMENT CORPORATION

BHAVNESH SAINI *(Judicial Member)* and
PRASHANT MAHARISHI *(Accountant Member)*

February 26, 2020.

SS ▸ ITA 1961, s 37(1), *Expln. 1*
AY ▸ 2011-12, 2012-13
HF ▸ Assessee

BUSINESS EXPENDITURE—EXPENSES PROHIBITED BY LAW—GRANTS—ASSESSEE RECEIVING GRANTS ON ANNUAL BASIS AND GRANTS USED IN ACCORDANCE WITH DIRECTIONS OF GOVERNMENT—ASSESSING OFFICER ALLOWING SALARY EXPENSES IN PRECEDING YEAR—ASSESSING OFFICER SHOULD NOT HAVE TAKEN A DIFFERENT STAND IN CURRENT YEAR—SALARY PAID TO ALL OLD EMPLOYEES WHO WORKED FOR ASSESSEE AND EXPENSES GENUINE—EXPENSES WHOLLY AND EXCLUSIVELY FOR PURPOSE OF BUSINESS—DEDUCTIBLE—INCOME-TAX ACT, 1961, S. 37(1), *Expln. 1.*

The assessee received grants from the Ministry of Science and Technology, Government of India. The grants were to be used in accordance with the directions issued by the Ministry. The Assessing Officer noted that as per the auditor's report, the assessee had violated the cap limit of Rs. 1.23 crores for the technology promotion programme and Rs. 1.25 crores for the invention promotion programme. He was of the view that the Government had sanctioned the grant for expenditure and put the cap limit for making the payments. The assessee had transferred all excess expenses of Rs. 178.33 lakhs to schedule O of the income and expenditure account and added it in the figure of Rs. 177.86 lakhs pertaining to NRSC. The assessee had been following the policy for a long time maintaining the books of the invention promotion programme and the technology promotion programme separately, wherein unspent money received in grant had always been shown as liabilities being advance from the Government and no profit was shown in the books of the assessee. He observed that higher expenditure projected by the assessee under these may be allocated to new activities head. However, the assessee had debited the expenses on account of salary amounting to Rs. 1.78 crores during the instant year which was allocated to the invention promotion programme and technology promotion programme projects. He noted that the

assessee had chosen to divert the expenditure from the Government grant head to the normal profit and loss account thereby debiting this amount. Therefore, it was clear that the sudden and huge rise in expenditure on account of wages was due to the debit of grants related expenditure amounting to Rs. 1.78 crores, which would not otherwise have been claimed as a loss or adjusted against profits. The Assessing Officer accordingly made the addition. The Commissioner (Appeals) held that the expenditure of Rs. 178 lakhs under the head salary expenditure was justified and deleted the disallowance made by the Assessing Officer. On appeal :

Held, *that the assessee received grants on annual basis and the grants had been used by the assessee in accordance with the directions of the Government. In the preceding assessment year, the Assessing Officer had accepted the assessee's claim without any objection. Therefore, when the same policy had been followed by the assessee and accepted by the Assessing Officer, he should not have taken a different stand. Further the assessee had made it very specifically clear that salary was paid to all old employees who had worked for the assessee and the expenses were genuine. Tax had been deducted on the salary and paid to the Government. All the employees had worked for the assessee. Therefore, the assessee had incurred the salary expenses which were exclusively for the purpose of business activities. No case was made out by the Assessing Officer that making salary payment was an offence or something prohibited by law. Therefore,* Explanation 1 *to section 37 of the Income-tax Act, 1961, would not be attracted in the case of the assessee.*

I. T. A. Nos. 505 and 1013/Delhi/2017 (assessment years 2011-12 and 2012-13).

Ms. Rakhi Vimal, Senior Departmental representative, for the Department.

Niren Gupta, Chartered Accountant, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 78 ITR (Trib) (S. N.) 58 (Bangalore)

[Before the Income-tax Appellate Tribunal — Bangalore "B" Bench]

LALITAMBA PATTINA SOUHARDA SAHAKARI NIYAMITHA

v.

PRINCIPAL COMMISSIONER OF INCOME-TAX

N. V. Vasudevan ***(Vice-President)*** and
B. R. Baskaran ***(Accountant Member)***

February 26, 2020.

SS ▸ ITA 1961, ss 2(19), 80P(2)
AY ▸ 2014-15
HF ▸ Assessee

Co-operative society—Special deduction—Assessee registered under Karnataka Souharda Sahakari Act, 1997—Is a co-operative society—Entitled to deduction—Income-tax Act, 1961, ss. 2(19), 80P(2).

Held, *that the assessee-society registered under the Karnataka State Sahakari Souharda Act, 1997 could be regarded as a co-operative society within the meaning of section 2(19) of the Income-tax Act, 1961 entitled to the benefit of deduction under section 80P(2).*

Swabhimani Souharda Credit Co-operative Ltd. *v.* Government of India [2020] 421 ITR 670 (Karn) *relied on*.

I. T. A. No. 1196/Bang/2019 (assessment year 2014-15).

S. V. Ravishankar, Advocate, for the assessee.

Muzaffar Hussain, Commissioner of Income-tax-Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 59 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "SMC" BENCH]

NAFISA ABIZAR BANATWALA

v.

INCOME-TAX OFFICER

SAKTIJIT DEY *(Judicial Member)* and
G. MANJUNATHA *(Accountant Member)*

March 4, 2020.

SS ▸ ITA 1961, s 50C
AY ▸ 2013-14
HF ▸ Assessee

CAPITAL GAINS—LONG-TERM CAPITAL GAINS—FULL VALUE OF CONSIDERATION—STAMP DUTY VALUATION DEEMED SALE CONSIDERATION—PROCEDURE—ASSESSING OFFICER TO GET VALUATION DONE THROUGH DISTRICT VALUATION OFFICER—INCOME-TAX ACT, 1961, S. 50C(2).

The assessee declared long-term capital gains of Rs. 2,23,544 on sale of a flat. The Assessing Officer found that the stamp duty authority had valued the property for stamp duty purposes at Rs. 37.80 lakhs as against the declared sale consideration of Rs. 30 lakhs. The Assessing Officer called upon the assessee to explain why the value determined by the stamp duty authority should not be adopted as deemed sale consideration for computing long-term capital gains. The Assessing Officer rejected the submissions of the assessee and treated the value determined for stamp duty purposes as the deemed sale consideration and computed the long-term capital gains accordingly. Further, he disallowed deduction claimed by the assessee towards amenities and cost of repairs and renovation and brokerage fee while computing the long-term capital gains. The Commissioner (Appeals) affirmed this. On appeal :

Held, *(i) that the Assessing Officer had invoked the provisions of section 50C(1) of the Income-tax Act, 1961 to determine the long-term capital gains by adopting the value determined by the stamp valuation authority as the deemed sale consideration. However, before doing so, he had not made any reference to the District Valuation Officer to determine the value of the property in terms of section 50C(2). Irrespective of the fact whether the assessee objects to the stamp duty valuation or not, the Assessing Officer has to get the valuation done through the District Valuation Officer in terms of section 50C(2). The assessee had filed the valuation report obtained from a registered*

valuer valuing the property at Rs. 27,20,000. The valuation was not before the Departmental authorities. The valuation done by the registered valuer had to be examined by the Assessing Officer and the District Valuation Officer. Therefore, the issue was remanded to the Assessing Officer for fresh adjudication after complying with the provisions of section 50C(2) by referring the valuation of the property to the District Valuation Officer.

(ii) That the disallowance of the assessee's claim of deduction was primarily on the reasoning that it was not supported by proper evidence. The issue was remanded to the Assessing Officer for fresh adjudication so that the assessee had an opportunity to furnish the required evidence to prove her claim. The Assessing Officer was directed to decide the issue after allowing the assessee due opportunity of being heard.

I. T. A. No. 974/Mumbai/2019 (assessment year 2013-14).

Ravindra Poojary for the assessee.

Saurabh Deshpande for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 78 ITR (Trib) (S. N.) 60 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "A" BENCH]

AVV ENTERPRISES P. LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

H. S. SIDHU *(Judicial Member)* and
N. K. BILLAIYA *(Accountant Member)*

March 5, 2020.

SS ▸ ITA 1961, ss 200A, 234E
AY ▸ 2013-14, 2014-15
HF ▸ Assessee

DEDUCTION OF TAX AT SOURCE—FEE FOR DEFAULT IN FURNISHING STATEMENT—PROVISION PROSPECTIVE—NO DEMAND COULD BE MADE FOR ASSESSMENT YEARS FOR PERIODS PRIOR TO 1-6-2015—INCOME-TAX ACT, 1961, SS. 200A, 234E.

The provisions of section 200A(l)(c), (d) and (f) of the Income-tax Act, 1961 came into force with effect from June 1, 2015 and hence, there was no authority or competence or jurisdiction on the part of the Department to compute and determine the fee under section 234E in respect of an assessment year relevant to an earlier period or returns prior to June 1, 2015. When no

express authority was conferred by the statute under section 200A prior to June 1, 2015 for computation of any fee under section 234E nor its determination, the demand or the intimation for the previous period or previous year prior to June 1, 2015 could not have been made.

Held accordingly, *that in the light of the effective date of amendment, i. e., June 1, 2015 the Assessing Officer was directed to delete the fee levied under section 234E for the assessment years 2013-14 and 2014-15.*

FATHERAJ SINGHVI *v.* UNION OF INDIA [2017] 10 ITR-OL 509 (Karn) *and* VKARE BIO SCIENCES PVT. LTD. *v.* DY. CIT (I. T. A. Nos. 2308 to 2310/Delhi/2017 dated August 30, 2019) *followed*.

I. T. A. Nos. 2312 and 2322/Delhi/2017 (assessment years 2013-14 and 2014-15).

None appeared for the assessee

Ms. Rakhi Vimal, Senior Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 61 (Visakhapatnam)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — VISAKHAPATNAM BENCH]

TAMILNAD MERCANTILE BANK LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX (TDS)

V. DURGA RAO *(Judicial Member)* and
D. S. SUNDER SINGH *(Accountant Member)*

March 6, 2020.

SS ▸ ITA 1961, s 201(1), (1A)
AY ▸ 2010-11
HF ▸ Department

DEDUCTION OF TAX AT SOURCE—INTEREST—JOINT DEPOSIT HOLDERS—ASSESSEE NOT FURNISHING ACTUAL TAX LIABILITY OR DETAILS—CALCULATION OF TAX DEDUCTION AT SOURCE LIABILITY IN RESPECT OF 162 CASES JUSTIFIED—INCOME-TAX ACT, 1961, S. 201(1), (1A).

The assessee was a banking company. The Assessing Officer found that the assessee had paid interest on deposits to the extent of Rs. 6,00,34,859 out of which interest payment of Rs. 3,80,32,971 was within the threshold limit for deduction of tax at source. The assessee had not aggregated the interest

payments made to a single depositor having multiple accounts, and on deposits made in joint names for arriving at the liability for deduction of tax at source and since the aggregate interest exceeded the threshold limit for deduction of tax at source, he treated the assessee as the assessee-in-default for failure to deduct tax at source under section 194A to the extent of interest payment of Rs. 2,32,63,095 under section 201(1) and (1A). He treated the assessee as the assessee-in-default for non-submission of form 15G and form 15H to the extent of Rs. 1,00,042 under section 201(1) and Rs. 30,000 under section (1A) aggregating to Rs. 1,32,042 in the case of joint deposit as per Circular No. 256. The Commissioner (Appeals) allowed the assessee's appeal on interest payment in respect of form 15G and form 15H. In respect of deposits held in joint names, he took the view that tax at source required to be deducted on the aggregate amounts of interest payments where it exceeded the threshold limit. He considered the Central Board of Direct Taxes letter to the Indian Bank Association on bank deposits wherein the Board had clarified that in the case of deposits in joint names, the applicability of provisions under section 194A with reference to the limit of Rs. 10,000 was to be considered only in the hands of the first deposit holder. Accordingly, he deleted the tax deduction at source liability under section 201 and interest under section 201(1), (1A) to the extent of Rs. 5,03,108 in 82 cases and confirmed the amount to the extent of Rs. 68,24,522 in 162 cases after examination of the details filed by the assessee before him. On appeal :

Held, *that the assessee neither furnished the actual liability nor furnished the details. It could not bring any mistake of calculation of tax liability under section 201 and 201(1A). Therefore, there was no mistake in the tax calculation. The Commissioner (Appeals) had correctly calculated the tax deduction at source liability in respect of 162 cases.*

I. T . A. No. 257/Vizag/2017 (assessment year 2010-11).

D. L. Narasimha Rao, authorised representative, for the assessee.

V. Rama Mohan, Departmental representative, for the Department.

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[2020] 78 ITR (Trib) (S. N.) 63 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "B" BENCH]

MD. HUSSAIN HABIB PATHAN

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

SANJAY ARORA *(Accountant Member)* and
C. N. PRASAD *(Judicial Member)*

March 6, 2020.

SS ▸ ITA 1961, s 24(1)(b)
AY ▸ 2009-10
HF ▸ Assessee

INCOME FROM HOUSE PROPERTY—INTEREST ON BORROWED CAPITAL—PART OF SELF-OWNED HOUSE PROPERTY LET TO UNMARRIED SON AND DAUGHTER—PRIVATE ARRANGEMENT—NO EVIDENCE THAT ARRANGEMENT NOT GENUINE—LOSS ON ACCOUNT OF INTEREST TO BE ADJUSTED AGAINST RENTAL INCOME—GENUINE ARRANGEMENT COULD NOT BE DISREGARDED AS RESULTING TO MINIMISE ASSESSEE'S TAX LIABILITY—INTEREST ON ENTIRE PROPERTY NOT ALLOWABLE AS RENTAL INCOME PART OF HOUSE PROPERTY—ASSESSING OFFICER TO GIVE DEFINITE REASONS FOR DISAGREEMENT IN WHOLE OR IN PART WITH ASSESSEE'S WORKING—INCOME-TAX ACT, 1961, S. 24(1)(b).

The assessee had claimed a loss of Rs. 15,32,120 under the head "Income from house property on account of interest on borrowed capital at Rs. 21,62,120, adjusting it against the rental income of Rs. 9 lakhs. The Assessing Officer held that the assessee's major son and major daughter resided thereat along with the assessee's other family members. According to him nobody would charge rent for residence from his own son and daughter, particularly considering that both were unmarried and living together with their family at it was self-owned abode. The arrangement was therefore regarded merely as a tax reducing device adopted by the assessee, liable to be ignored. Treating the house property as a self-occupied property, the Assessing Officer restricted the claim of interest under section 24(1)(b) of the Income-tax Act, 1961 to Rs. 1,50,000, and which was confirmed by the Commissioner (Appeals). On appeal :

Held, *that the arrangement was highly unusual particularly considering that the rent was in respect of a self-owned property, i. e., the family's residence with the assessee's son and daughter being unmarried. Being a private arrangement not involving any third party not informing the co-operative*

housing society may not be of much consequence. The Department had rested merely by doubting the genuineness of the arrangement without probing the facts further.The assessee's major son and daughter were financially independent or substantially so with independent incomes, sharing the interest burden of their common residence with their father. And, as such, instead of transfer of funds to him per se they had, by mutual agreements, paid rent, as that would, apart from meeting the interest burden to that extent, also allow tax saving to the assessee-father. A genuine arrangement could not be disregarded because it resulted or operated to minimise the assessee's tax liability. There was nothing on record to further the Department's case of the arrangement being not a genuine arrangement, i. e., apart from being unusual. The house property the family residence of the family, was, in view of the rent agreements, both a self-occupied and a let out property. Therefore interest claimed qua the entire property could not be allowed in full against the rental income, which was qua a part of the house property. Therefore the assessee's interest claim could not be allowed in full and shall have to be suitably proportioned, even as agreed to by the assessee, restricting the interest claim relatable to the self-occupied part thereof to, as allowed, Rs. 1.50 lakhs. The assessee shall provide a reasonable basis for such allocation as well as the working of the area let. In view of the joint residence, be that no area (portion) was specified in the rent agreements. The number of family members living jointly, their living requirements – which may not be uniform, fair rental value of the property, etc., were some of the parameters which could be considered for the purpose. The Assessing Officer shall adjudicate thereon by a speaking order, giving definite reasons for being in disagreement, where so, in whole or in part, with the assessee's working, within a reasonable time.

Union of India *v.* Azadi Bachao Andolan [2003] 263 ITR 706 (SC) *and* Vodafone International Holdings B. V. *v.* Union of India [2012] 341 ITR 1 (SC) *applied*.

I. T. A. No. 4058/Mumbai/2013 (assessment year 2009-10).

Kirit Mehta, Chartered Accountant, for the assessee.

Ms. Kavita P. Kaushik, Departmental representative, for the Department.

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