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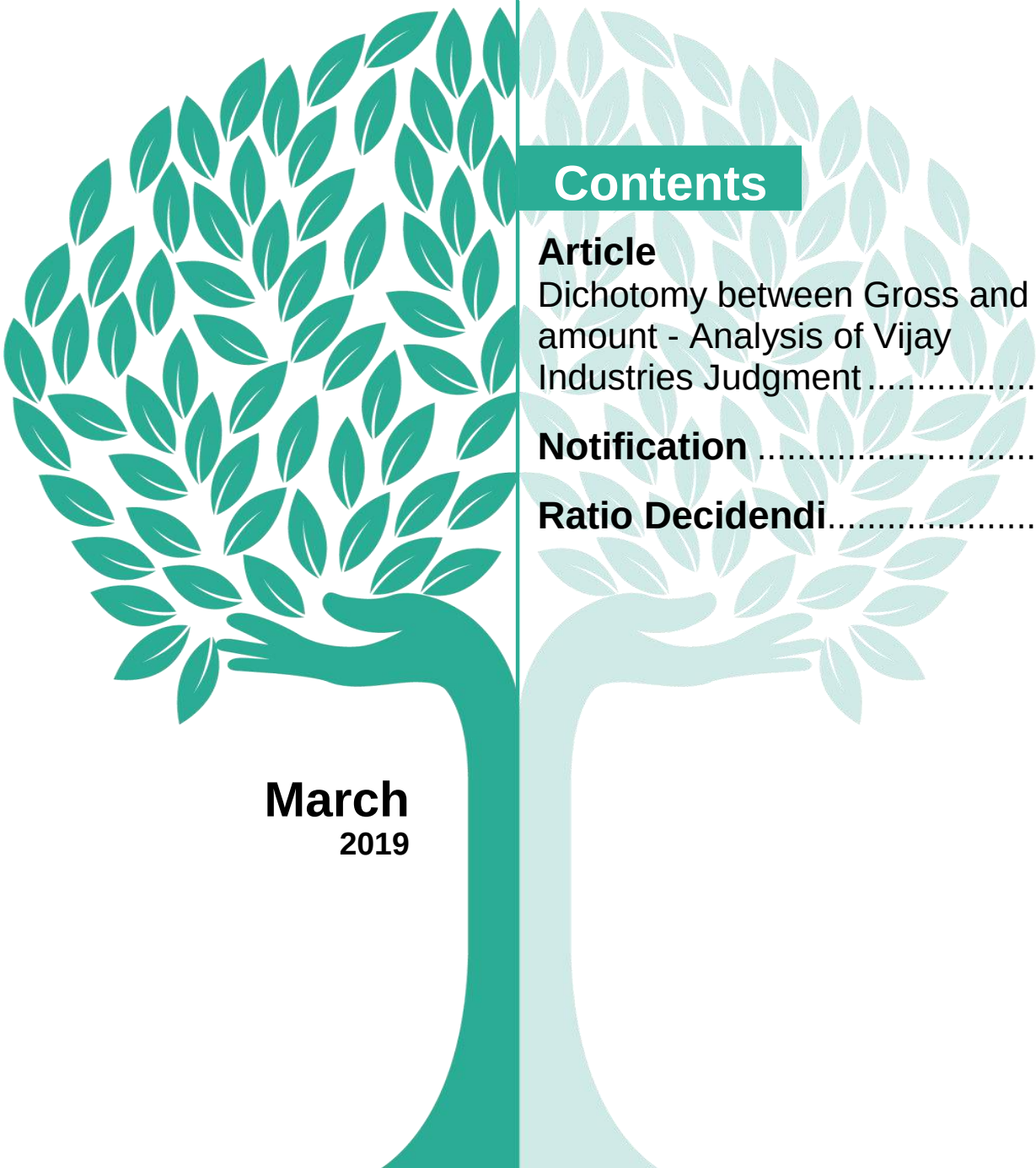

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Article

Dichotomy between Gross and Net amount - Analysis of *Vijay Industries* Judgment

By **Mahendra Singh**

Introduction:

The Income-tax Act, 1961, under Chapter VI-A, provides for certain special deductions. These special deductions have been subject matter of litigation all along. One such provision is Section 80HH, which provides for deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.

In a recent judgment in the case of *Vijay Industries*[1], a three-judge bench of the Hon'ble Supreme Court decided the issue as to whether the deduction under Section 80HH is to be calculated after deducting 'depreciation' and 'investment allowance' from profits and gains or not. The Court held that the deduction under Section 80HH is to be allowed on the 'profit and gains' without applying the provisions of the Act ('Gross amount') and not on profits and gains computed as per the Act ('Net amount'). The relevant assessment years in this case were assessment years 1979-80 and 1980-81.

In this case, the assessee had challenged the judgment of division bench of Hon'ble Supreme Court in *Motilal Pesticides*[2], wherein in respect of same section 80HH and for the same assessment years, the Court had held that the deduction is to be allowed on the net amount and not on the gross amount. This ruling was being regularly followed by the department to compute deduction under 80HH on net amount.

This article tries to analyse the legal position existing prior to *Vijay Industries* judgment, and the change in position brought by this judgment.

Position of law before Vijay Industries:

The provisions relating to special deductions under chapter VI-A, heading "C- Deductions in respect of certain income" have been interpreted differently by the courts in India as discussed in the following paragraphs. This part of the article tries to discuss the interpretation given by the courts to other provisions of Chapter VI-A and its relevance in interpreting Section 80HH.

Interpretation of phrase "where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains"

In *Cambay Electric Supply Industrial Co Ltd*[3], the Supreme Court interpreted the above-mentioned phrase in Section 80E, as it existed, and held that the deduction is to be allowed on the net amount, i.e. profits and gains after deducting unabsorbed depreciation and unabsorbed development rebate. The Court held that since the total income is required to be computed as per the provisions of the Act, unabsorbed depreciation and unabsorbed development rebate will have to be considered for arriving at the amount eligible for deduction.

[1] Civil Appeal No. 1581-82/2005 (SC).
[2] [2000] 160 CTR 389 (SC).
[3] [1978] 113 ITR 84 (SC).

Interpretation of the phrase "where the gross total income includes any income by way of….."

In *Cloth Traders*[4], the Supreme Court held that the deduction under Section 80M in respect of dividend is to be allowed on gross amount. Court held that the opening words in the section, namely, "Where the gross total income of an assessee.....includes any income by way of dividends from a domestic company" refer only to the inclusion of the category of income by way of dividends and not to the quantum of the income included in the gross total income. Therefore, the deduction is to be calculated with reference to the whole amount of dividends. In this judgment, the Court referred to some other provisions such as 80-K, 80-MM, 80N-, 80-O, etc. and noted that deductions under these sections as well are on the whole amount. However, it is to be noted that the judgment of *Cambay Electric Supply Industrial Co. Ltd.* was not discussed in *Cloth Traders*.

Insertion of Section 80AA and 80AB

After the judgment of *Cloth Traders*, the legislature inserted Section 80AA (applicable to Section 80M) and 80AB (applicable to other deductions) in Chapter VIA of the Act. Both these sections provided that the deductions specified in the aforesaid sections will be calculated with reference to the net income as computed in accordance with the provisions of the Act (before making any deduction under Chapter VIA) and not with reference to the gross amount of such income. Section 80AA was inserted with retrospective effect i.e. from 1st April, 1968 whereas 80AB was prospective in operation from 1st April, 1981 (from assessment year 1981-82 onwards).

Constitution bench in Distributors Baroda

The Constitution Bench of the Hon'ble Supreme Court in *Distributors Baroda*[5] overturned the decision of *Cloth Traders* and held that the deduction in respect of Section 80M is to be allowed on net amount and not gross amount. The Supreme Court in this judgment did not discuss the retrospectivity of Section 80AA, as it was not necessary in view of its interpretation of Section 80M.

The Court held that the condition for applicability of Section 80M is that the gross total income must include the income by way of dividend. The deduction is to be made from 'such income by way of dividends', and therefore, it is elementary that 'such income by way of dividends' from which deduction has to be made must be part of the gross total income. The Court held that it is not the full amount of dividend which is included in the gross total income, but what is included would only be the amount of dividend as computed in accordance with the provisions of the Act. Accordingly, the deduction required to be made for computing the total income from the gross total income can only be from the amount of dividend computed. Therefore, the deduction was to be allowed on net amount and not gross amount. The court rejected the interpretation of *Cloth Traders* that the term 'such income by way of dividends' only refers to category of income and not to quantum of income.

After this judgment, section 80AA was rendered superfluous.

However, in *Motilal Pesticides*, the question came up whether the interpretation as provided in *Distributors Baroda* in respect of Section 80M is to be followed for the purposes of section 80HH or not.

[4] [1979] 118 ITR 243 (SC).

[5] [1985] 155 ITR 120 (SC).

The Court held that the language of Section 80HH and 80M was similar and following the judgment of *Distributors Baroda*, the deduction is to be allowed on the net amount. The Court held that the interpretation of *Distributors Baroda* is irrespective of Section 80AA. Further, the Court noted that though Section 80AB was to have prospective operation, similar to section 80 AA, even Section 80AB is to be understood to have been enacted to declare the law as it always stood. Therefore, it was held that the deduction was to be allowed on net amount.

Judgment of Vijay Industries and analysis

In this judgment, the Court held that Chapter VI-A is a standalone chapter *dehors* Chapter IV of the Act. Therefore, provisions relating to various kinds of deductions mentioned therein have to be construed independent of Chapter IV of the Act. Further, the Court held that there is a distinction between the concept of 'income' on one hand and 'profits and gains' on the other hand.

The Court held that the scheme of Chapter VI-A which includes Sections 80C to 80U contain different subject matters and also specify particular percentage of deductions for a particular period. Further, different provisions from Sections 80C to 80U also specify as to how such a deduction is to be worked out. The court held that insofar as Section 80HH is concerned, it specifically mentions deduction at the rate of 20% of 'profits and gains'. On reading of Section 80HH along with Section 80A, it is clear that such a deduction has to be on gross profits and gains i.e. before computing the income as specified in Sections 30 to 43D of the Act.

The Court noted that the change in legal position was brought by Section 80AB which is prospective in operation and therefore not applicable to relevant assessment years.

It may be noted that the judgment of *Cambay Electric Supply Industrial Co Ltd* and *Distributors Baroda* were referred to and discussed. However, the same were distinguished on the ground that the language of Section 80HH was different from 80E and 80M.

The judgment of *Distributor Baroda* was distinguished on the basis that it was a decision on Section 80M which used the term 'income by way of dividend', whereas 80HH uses the term 'profit and gains' and does not use term 'income'. However, one could always debate whether the judgment of Supreme Court in *Distributors Baroda* has been properly considered in *Vijay Industries.*

In *Distributors Baroda*, while holding that the deduction is to be allowed on net amount, the Court interpreted the condition for applicability of Section 80M, i.e. gross total income must include income by way of dividend. The Court held that it not only refers to category of income but also to quantum of income. The Court held that what is included in gross total income is the amount of dividends computed in accordance with the provisions of the Act. The judgment of *Vijay Industries* unfortunately does not discuss this point.

Be that as it may, section 80AB inserted with effect from 1st April, 1981 seems to make it very clear that deductions specified in Chapter VIA will be calculated with reference to the net income as computed in accordance with the provisions of the Act (before making any deduction under Chapter VIA) and not with reference to the gross amount of such income. Therefore, the recent judgment in the case of *Vijay Industries* may not

have any impact on Chapter VIA deductions for the period post 1st April, 1981.

However, this judgment is likely to have an impact on the interpretation of various other sections which grants exemptions or deductions with reference to "profits and gains" of a business or activity rather than the "income" therefrom. May be the final verdict on this issue is yet to be pronounced.

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Notification

Receipt of share premium by start-ups from certain resident investors not to attract Section 56(2)(viib)

The CBDT has issued Notification No. 13/2019, dated 5-3-2019 stating that Section 56 (2)(viib) would not apply to consideration received from a resident who fulfils the conditions laid down in the notification dated 19-2-2019 issued by DPIIT. As per the notification issued by DPIIT, investment in excess of fair market value of shares, by a resident in a start-up company would not be taxed as income in the hands of the company if it fulfils conditions specified. The conditions mentioned include, stipulation that the net worth of the investor exceeds INR 100 crores or its turnover in the previous year exceeds INR 250 crores, the aggregate of paid up share capital and share premium received by the start-up should not exceed INR 25 crores and also restrictions on investment by the start-up in certain assets.

Ratio Decidendi

Non-compete fee received by persons associated with transferor of business taxable as business income, not as capital gain

The assessee claimed that consideration received by him for sale of 'technical concept' was not taxable since it pertained to sale of self-generated asset with nil cost of acquisition and hence capital gains could not be computed. The assessee had entered into an agreement with his 'employer' (IFCo) who incurred expenses to develop/commercially exploit a concept of website malware monitoring developed by him. No consideration was paid to the assessee for providing the right, but as per the terms of the agreement the company was allowed to exploit the right manufacture or use in business the concept/product without payment of royalty. The

agreements further stated that if IFCo was not able to commercialise the concept or it sold the business within seven years, the reversionary right to use the concept would revert to the assessee. The product developed along with certain other assets was sold to another company (purchaser). The assessee also signed a non-compete covenant whereby the assessee agreed not to engage in any activity which would compete with the business of the purchaser.

The CIT(A) upheld the reasoning of the AO that since the assessee was an employee of IFCo at time the concept was developed the employer would own the same in terms of Section 17 (c) of the Copyright Act 1957 and hence the assessee claim that the consideration was for transfer of a capital asset was incorrect. Further, the CIT (A) concluded that the sum received by the assessee was for 'not carrying on any activity in relation to any businesses under Section 28(va) (a) of the Income Tax Act and hence was taxable as revenue receipt. The CIT(A), following *Dr. B.V Raju* (2012) 18 taxman.com 188 (Hyderabad) (SB), held that non-compete fee paid to the transferor of a business could be taxable under capital gains but sums paid to persons associated with the transferor to ensure that they also do not indulge in competing business would be taxable under Section 28(va)(a). The CIT(A) Order was upheld by the Tribunal. [*Ashish Tandon* v. *ACIT*, ITA No.: 1954/Ahd/ 2017, ITAT, Ahd, Order dated 8-2-2019]

Assessee must have filed return in previous year in order to claim carry forward of loss

High Court of Bombay held that in order to be eligible to carry forward loss of previous year, the assessee must have filed a return of income claiming such loss. In the case of the assessee, it was incorporated as a trust in the US and later converted to a LLC. The assessee had five investment funds operating under a separate PAN and sought to carry forward the loss of three of the funds. It argued that since there was no change in the status of the assessee as per the laws of US which were the applicable law, it was eligible to carry forward the loss as per Section 74 of the Income Tax Act, 1961. However, the High Court upheld the reasoning of the AAR, holding that while the status of the assessee remained unchanged, it should also fulfil the condition of having filed a return of income before the due date as per Section 80 of the Income Tax Act. Since the returns had been filed by the investment funds and not the assessee, it was not entitled to carry forward the loss. [*Aberdeen Institutional Commingled Funds* v. *AAR, DCIT*, WP 9358/2018, decision dated 8-3-2019]

Option price paid for right of first refusal is not taxable as business income

The revenue department argued that option price received by the assessee in terms of a joint venture agreement to co-promote insurance business was taxable as business income in the hands of the assessee. However, the assessee contended that the transaction was in nature of capital contribution and investment in shares was not the business of the assessee. The said agreement was entered into with a non-resident company in view of the restriction on foreign companies to enter the insurance business and the clauses provided that in case the non-resident was permitted to increase its stake, the asesssee would offer shares to the non-resident first. In consideration of this the non-resident had paid a sum as option price to the assessee. The option price was to be refunded at the time of

transfer of shares to the non-resident. Thus, in the years prior to the actual transfer of shares, the sum was not offered to tax. The Commissioner invoked his powers under Section 263 of the Income Tax Act, stating that the assessment was erroneous and prejudicial to the interest of Revenue. However, the ITAT set aside the order of the Pr. CIT. [*Dabur Invest Corp* v. *Pr.CIT*, ITA No. 1763/DEL/2018, ITA No. 1764/DEL/2018, ITAT, Delhi order dated 11-3-2019]

Appeal proceedings against defunct company not infructuous

The departmental appeal before the jurisdictional High Court was dismissed by terming it 'infructuous', on the sole ground that since the assessee company's name had been struck-off from the Register of the Company u/s. 560(5) of the Companies Act, 1956, it stands dissolved and the issue need not be decided. The Apex Court set aside the order of the High Court and remanded the matter for fresh consideration on merits, on the following grounds – (i) High Court had overlooked *Proviso* to Section 560(5) of the 1956 Act that covers the liability of the Company and its official after its dissolution under Sec. 560(5); (ii) High Court had failed to consider Chapter XV of the Income Tax Act, 1961, which deals with 'liability in special cases', wherein Sec. 176 specifically talks about 'discontinuance of business or dissolution'. Therefore, it was held that considering the foregoing provisions, which squarely cover the scenario in the facts of the case, the High Court was incorrect in dismissing the appeal. *[CIT v. Gopal Shri Scrips Pvt. Ltd*, Civil Appeal No. 2922/2019, Supreme Court judgement dated 12-2-2019]

Retrenchment expenses paid to out-going workmen upon closure of one out of the three manufacturing units is an allowable expense

The assessee was running three units for manufacture of chemicals, wherein, all the units had a single management. One of the units was making huge losses and therefore the assessee-company decided to close it, for the reason that it would better facilitate carrying on of business of the other units. Consequently, the loss-making unit was closed and the out-going workmen were paid retrenchment compensation as per the contract with the labour union. This retrenchment compensation and the other expenses relating to the sale of the unit were disallowed by the AO for being a capital expenditure, for AY 2004-05. The Court held that, *first*; the retrenchment compensation was necessitated for reason of the closure of business and the employees being sent out of employment. *Second*, assessee had only a single management for all units and the purpose of closure of the unit was that it was a loss making unit and its sale would facilitate carrying on of business of the other units, i.e. for increasing business efficiency. Therefore, their expenses are revenue expenses and thus allowed under Section 37 of the Income Tax Act. [*CIT* v. *TCM Ltd.*, ITA No. 171 of 2011, Kerala High Court judgement dated 12-2-2019]

Increase in general reserve post amalgamation is not taxable as income

Under a Composite Scheme of Arrangement and Amalgamation the assessee company undertook a restructuring of various entities within the group. As per the Scheme various business undertaking of the assessee were transferred to SPVs by way of demerger, without consideration and it was held by an entity which later amalgamated with the assessee. The investment held by the amalgamating company was

recorded at market value and hence the balance of general reserve increased. The department argued that the increase was taxable as business income in terms of Section 28(iv) of the Income Tax Act. The assessee argued that the legislative intent behind introduction of sub-section (iv) to Section 28 was to tax real and tangible benefit arising from a business or profession. The ITAT held that amalgamation is not a business transaction and increase in general reserve on recording of investments does not give rise to income. [*Aamby Valley Ltd*. v. *ACIT*, ITAT, Mumbai Order dated 22-2-2019]

Section 56(2) (viia) does not apply to transfer of shares in amalgamation

The ITAT also held that Section 56(2) (viia) cannot apply to transaction of amalgamation. Referring to the Memorandum to the Finance bill, 2010, it stated that the objective of introducing the section is to prevent the practice of transferring unlisted shares and for a transfer there must be a transferor and transferee and an asset which is transferred. In case of amalgamation, there is not transfer, rather there is a statutory vesting and hence Section 56(2) (viia) is not attracted. Also, the section is in nature of an anti-abuse provision and would not apply to court approved Schemes. [*Aamby Valley Ltd*. v. *ACIT*, ITAT, Mumbai Order dated 22-2-2019]

Amendment to Section 47(vii) is retrospective

The revenue department also argued that since the words *'except when the shareholder itself is the amalgamated company'* were inserted in Section 47(vii) in 2012 and hence in transactions prior to 2012, the assessee cannot take benefit of the same and in absence of consideration being paid, the transaction would not qualify as a tax neutral transfer. However, the ITAT held that the insertion was made only to make the provision workable and the amendment would apply even to transactions prior to 2012. [*Aamby Valley Ltd*. v. *ACIT*, ITAT, Mumbai Order dated 22-2-2019]

Transfer of cases under Section 127 does not affect jurisdiction of High Court

The assessee preferred an appeal in High Court of Bombay against the order passed by the Bangalore Tribunal. The assessee's case had been transferred from Bangalore to Pune as per Section 127 the Income Tax Act. It was argued that transfer of case or 'all proceedings under the Act' would cover appeals under the Income Tax Act, before the High court. However, the High Court held that the jurisdiction of High Court would be decided based on the situs of the tribunal passing the order and transfer of cases under Section 127 of the Income Tax Act, cannot apply to High Court which are constituted under the Constitution and hence appeal against the order of Bangalore Tribunal would lie in Karnataka High Court. [*Pr. CIT* v. *Sungard Solutions (I) P Ltd*, ITA 1142/2016, Bombay High Court judgement dated 26-2-2019]

Extension of stay - Ratio in Asian Resurfacing (P) Ltd. not applicable when case adjourned not at instance of Assessee

The Assessee filed an application for stay seeking extension of stay beyond 6 months. The argument by the Assessee was that it has a strong prima facie case on merits and that the delay on disposal of the matter cannot be attributed to the Assessee. The Assessee had further argued that when the matter was first posted, the Bench did not function, that on the second occasion, the matter was adjourned for

want of time and on the third occasion, the Department sought an adjournment. The Department placed reliance on the Apex Court ruling in *Asian Resurfacing of Road Agency Private Limited* and argued that in light of the said ruling, stay beyond 6 months is not permissible unless the Court, by an order in writing, grants so, in exceptional circumstances. It was held that since on all three occasions, the matter has been adjourned not at the instance of the assessee, stay extension application was to be allowed and the stay was ordered to be extended for a further period of 6 months or disposal of Appeal whichever is earlier. It was also directed that the assessee shall not seek time whenever the matter is posted next for hearing. *[Sheela Foam Limited v. DCIT (TS-116-ITAT-2019 (Delhi ITAT))]*

Receipt from surrender of sub-tenancy rights would be a capital receipt

The assessee's wife had taken the ground floor and mezzanine floor of premises on rent. The assessee was granted permission by his wife to use the ground floor of the premises to carry out his medical profession for which the assessee paid periodical rents to his wife. The rentals received were disclosed by the assessee's wife in her return of income. In FY 2013-14, the assessee's wife transferred her tenancy rights to a third party for a consideration. Since the assessee was a subtenant, he was also a confirming party to the arrangement. The assessee received a consideration of Rs.1.40 crores for transferring his occupational right in the ground floor. It was held that sub-tenancy rights would constitute a capital asset and the income from transfer of the same would be taxable under the head "Capital gains". *[ACIT v. Jayesh Kashrichand Shah (TS-118-ITAT (2019)-ITAT Mumbai))]*

Primary onus on the assessee to establish genuineness of the transaction and credit worthiness of the investor under Section 68

The assessee company has received certain sums as share capital and share premium from certain companies based in Mumbai, Kolkata and Guwahati. The face value of the shares of the Assessee Company was Rs.10. However, the same was subscribed to by the investor companies at a premium Rs.190 per share. To establish the genuineness of the transaction and to also enquire of the credit worthiness of the investors, the department sent notices to the investor companies. However, none of the representatives of the investor companies appeared in person. Further, the department, upon perusing the return of income filed by the companies and noted that very meagre return of income was disclosed by these companies. The department also observed that some of these investor entities were non-existent. For these reasons, the total amounts received by the assessee company as share capital and share premium was added to the total income of the assessee company under Section 68. The CIT (A) and the ITAT had deleted the disallowances made on the ground that the assessee had provided confirmations from the investor companies and that the amounts were received through normal banking channels. Before the Apex Court, the question of law was whether the Assessee had discharged its onus in establishing the genuineness of the transaction as required under Section 68 of the IT Act. It was held that the onus is on the Assessee to establish the genuineness of the transaction and that the enquires made by the department clearly revealed that the investors companies were either non-existent or did not have sufficient

sources to invest such huge sums in share capital of the Assessee company and that it was not demonstrated by the Assessee as to why shares were subscribed to at a very high premium. Therefore, it was held that the primary onus has not been discharged by the Assessee and the additions made under Section 68 of the IT Act were justified. *[PCIT v. N.R.A.Steel P Limited (2019) 103 taxmann.com 48 (SC).*

Price paid to sugarcane growers in excess of the minimum cane price fixed as per Sugarcane Control Order (1966) not allowable as a deduction.

The assessee a cooperative society was engaged in the business of production and sale of sugarcane. The assessment years in question were AY 1996-97 and 1997-98 for which years the Assessee was asked to explain as to why the price paid in excess of what was fixed as minimum cane price under the Sugar Control Order, 1996, to sugarcane growers which includes members of the society as also non-members should not be disallowed as deduction. The Assessee contended that the price paid was as per the rate fixed by the Commissionerate of Sugar for the State of Maharashtra which was in turn decided based on Mantri Committee guidelines. The tax authorities observed that while the minimum cane price was payable as per Clause 3 of the Sugar Control Order, Clause 5A of the said Order stipulated additional cane price to be paid based on profitability of the factory (society) and therefore such additional price which is decided based on the profitability would amount to distribution of profits and hence not allowable as a deduction. It was held that difference between the price payable as per Clause 3 of the Order and Clause 5A of the order comprises of an element of profit and to that extent the difference constitutes profit element, the same would amount to distribution of surplus by the society and deduction would not be permissible under Section 37(1). *[CIT v. Tasgaon Taluka S.S.K.Ltd (2019) 103 taxmann.com 57 (SC)]*

Deduction under Section 80-IC available at 100% from 6th year onwards if substantial expansion is undertaken by the assessee

The assessee had set up a unit in the State of Himachal Pradesh and had claimed deduction of 100% of profits, under Section 80-IC of the IT Act for the first five assessment years. Thereafter substantial expansion was carried out and Assessee sought to claim 100% deduction from the 6th Assessment year onwards. If such a substantial expansion not been carried out, then, the assessee would have been eligible to claim deduction of only 25% of the profits under Section 80-IC of the IT Act from the 6th to the 10th Assessment year. The deduction was denied by the department on the ground that there cannot be two initial assessment years for the purposes of claim of deduction under Section 80-IC of the IT Act. Held, distinguishing the decision in *Classic Binding Industries,* that the definition of initial assessment year, as is given in subsection (8) to Section 80IC itself contemplates a scenario where there can be two initial assessment years and that the cap in Section 80-IC is only on the number of assessment years and not on the quantum of deduction. Thus, the Apex Court held that the Assessee can claim deduction of 100% from the 6th year onwards till the end of the 10th assessment year if substantial expansion is carried out. *[PCIT v. Aarham Softronics (2019) 102 taxmann.com 343 (SC)]*

Provisions of Section 92BA would not apply in case of indirect shareholding

The assessee had purchased loans from HDFC Ltd. where it had 16.39% stake and where its

wholly owned subsidiary has 6.25% stake. The department sought to apply the provisions of Section 92BA on the ground that assessee effectively held more than 20% shareholding in HDFC Ltd. Section 92BA provides that any expenditure in respect of which payment has been made or is to be made to a person referred in 40A(2)(b) will be considered as a specified domestic transaction and subject to transfer pricing. Section 40A(2)(b) covers any person who has a substantial interest in the assessee will be covered and substantial interest is defined to mean beneficial ownership in shares carrying not less than 20% of voting power. It was held that the assessee owns only 16.39% shares in HDFC Bank and if one were to say assessee is beneficially holding the 6.35% shareholding in HDFC Ltd., then, this would mean that assessee is beneficial owner of shares held by HDFC Investments which is contrary to the canon of company law that shareholder cannot be construed as legal and beneficial owner of properties and assets of the company where it holds shares (*Bacha F.Guzdar [1955] 27 ITR 1 (SC)*). It was further, the expression used in Section 92BA is expenditure and purchase of loans is not expenditure for the assessee rather it is consideration paid for asset acquired and hence the transaction would not fall under the definition of Specified Domestic Transaction. [*HDFC Bank Limited v. CIT (2019) 306 CTR (Bom) 189*

Transit mixture enabling RMC to be kept wet during transportation is 'plant'

At issue was the claim for depreciation at 30% by the assessee, a manufacturer of Ready Mix Concrete (RMC) in respect of vehicles on which the transit mixer was mounted. The assessee argued that the RMC manufactured at the factory was to be transported to the sites and the transit mixer mounted on the vehicles, was used to keep the same wet by constant rotation. It was claimed that the vehicles were to be treated as vehicles used for hire since the contract for supply of RMC was a composite one. Alternately it argued that the transit mixer would qualify as plant since it was used to complete the process of production and would be eligible for additional depreciation. ITAT did not accept the first contention as regards the use of vehicles for hire since no separate charges were received but agreed that the assessee could claim higher depreciation on the transit mixture since it qualified as a plant. [*Innovative Infrastructure P. Ltd* v. *DCIT*, I.T.A. Nos. 3425 & 3426/Ahd/2015, ITAT, Ahmedabad, order dated 12-3-2019]

Expenses pertaining to previous year should be claimed at least on approximate basis: Assessee cannot plead impossibility in determining expenditure

The assessee was maintaining books on mercantile basis and did not claim expenditure related to legal fees in the previous year on the plea that the amount was being negotiated and it was finalised only in the following year. It also argued that the deduction was tax neutral since in either year the amount was otherwise allowable and did not have an element of rate arbitrage. However, ITAT held that the assessee' s plea of expenses being indeterminable could not be a ground to shift claim of deduction to the following year since it would distort the computation of profits and the assessee ought to have claimed expenses on an approximate basis and revised the same later. [*Living Media India Ltd*. v. *DCIT,* ITA No.648/Del/2016, Order of ITAT, Delhi dated 12-3-2019]

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