SUMMARY OF SUPREME COURT JUDGEMENTS SEPTEMBER, 2017

By
R.Sindhuja, Advocate, SAPR Advocates

1. COMMISSIONER OF INCOME TAX, JALANDHAR-1 Vs. M/s MAX INDIA LTD:

Diary No. 24343/2017

Dated: September 1, 2017

Issue 1:

If there is absence of any nexus of interest expenditure incurred during the year with the advances given to subsidiary companies, whether any disallowance is warranted u/s 36(1)(iii)?

Issue 2:

It would not mean that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income. Whether it is merely because of interest free funds borrowed on interest with the assessee have increased during any period?

Decision:

With reference to issue 1 interest free advances given by the assessee company to the subsidiary companies in earlier years, it was submitted with reference to overall fund flow position that the aforesaid loans and advances were given out of surplus interest free funds available with the assessee company in those years and consequently no part of the interest expenditure warrants disallowance under section 36(1)(iii) of the Act. It is clear that loans/advances have been made out of interest bearing borrowed funds that the alternative plea for contesting disallowance under section 36(1)(iii) that loan was given on account of commercial expediency will have relevance.

The disallowance of interest expenditure made under section 36(1)(iii) of the Act is directed to be deleted and this ground of the assessee is allowed."

With regard to issue 2 in Commissioner of Income Tax, Jalandhar I, Jalandhar vs. M/s Max India Limited, ITA No.186 of 2013, decided on 6.9.2016 = 2016-TIOL-2065-HC-P&H-IT. Merely because the interest free funds with the assessee have decreased during any period, it does not follow that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income. If even after the decrease the assessee has interest free funds sufficient to make the investment in assets yielding the exempt income, the presumption that it was such funds that were utilized for the said investment remains. There is no reason for it not to. The basis of the presumption as we will elaborate later is that an assessee would invest its funds to its advantage. It gains nothing by investing interest free funds towards other assets merely on account of the interest free funds having decreased. In that event so long as even after the decrease thereof there are sufficient interest free funds the presumption that they would be first used to invest in assets yielding exempt income applies with equal force." the High Court had held that no disallowance was warranted u/s 36(1)(iii), in absence of any nexus of interest expenditure incurred during the year with the advances given to subsidiary companies. The High Court of Chandigarh in its impugned judgment further held that merely because the interest free funds with the assessee have decreased during any period, it would not mean that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income.

The Hon'ble Supreme Court Condones the delay and granted leave to the Revenue Department on the issue of interest expenditure and exempt income.

2.COMMISSIONER OF INCOME TAX (TDS) Vs. PVR LTD:

Diary No.25220/2017

Dated: September 1, 2017

Issue:

If the interest u/s 201(1A) for delay has already been paid by assessee, whether penalty u/s 271C can be levied against default of delayed payment of TDS?

Decision:

The High Court of Allahabad held that the concurrent findings in respect of bonafide belief by Assessee in committing default have been recorded by authorities below and nothing has been shown to us that said findings are perverse, incorrect or otherwise illegal, we therefore, find no reason to interfere.

The Supreme Court condones the delay and issued notices to respective parties on the issue of default of delayed payment of TDS.

3. COMMISSIONER OF INCOME TAX, LUCKNOW Vs. M/S SAHARA INDIA COMMERCIAL CORPN LTD:

Diary No(s). 24382/2017

Dated: September 1, 2017

Issue:

When the conduct of Assessee in failing to deduct tax was bonafide and not contumacious, whether imposition of penalty u/s 271 r/w/s 201(1) is justified?

Decision:

The High Court of Allahabad held that in order to attract penalty under Section 271C of Income Tax Act, 1961, Revenue must establish that conduct of Assessee in failing to deduct tax was contumacious and not bona fide. Since, Assessee did not deduct tax treating that payment made under agreement was not covered by the term "advertisement" and hence Section 194C was not attracted, it cannot be said that issue was straight and simple

and Assessee had shown a contumacious conduct or lack of bona fide by not deducting tax. That being so, imposition of penalty u/s 271C r/w/s 273B would not be justified.

The Supreme Court condones the delay and dismisses the SLP, after having concurring with the opinion of High Court that imposition of penalty u/s 271C r/w/s 201(1) is not justified, when the conduct of Assessee in failing to deduct tax was bona fide and not contumacious.

4.PUNJAB STATE COOPERATIVE FEDERATION HOUSE BUILDING SOCIETIES LTD Vs. COMMISSIONER OF INCOME TAX-II, CHANDIGARGH:

Special Leave to Appeal (C) No(s). 8333/2017

Dated: September 1, 2017

Issue:

Whether an assessee can be granted an additional opportunity of being heard by way of remand when an assessee has not claimed deduction u/s 57 in respect of income earned from other sources and taxed u/s 56?

Decision:

The Assessee, a co-operative society, had earned income form interest on deposits held with scheduled banks. The AO considered such income as chargeable to tax u/s 56 under the head ‘income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses u/s 57. The High Court of Chandigarh held that when an assessee had not claimed deduction u/s 57 in respect of income earned from other sources and taxed u/s 56, such an assessee could be granted an additional opportunity of being heard by way of remand.

The Hon'ble Supreme Court grants leave to the Assessee to defend its case on the issue of allowability of deduction in respect of cost of funds and proportionate administrative and other expenses u/s 57.

5.CHIEF COMMISSIONER OF INCOME TAX AND ANR Vs. VAVVERU COOPERATIVE RURAL BANK LTD:

Diary No(s). 25770/2017

Dated: September 4, 2017

Issue:

Whether income derived by a Primary Agricultural Co-operative Credit Society, by way of interest on fixed deposit made with nationalized banks, would be treated as business income eligible for deduction u/s 80P(2)(a)?

Decision:

The Assessee co-operative bank is engaged in the sale of fertilisers to its members. A portion of the income derived there from was deposited by the petitioners in Nationalised Banks. The income derived by way of interest on the Fixed Deposits made by the petitioners with the Banks, was treated by Assessee as an income attributable to the profits and gains of business, eligible for deduction u/s 80P(2)(a). However, the AO treated the interest income as income from other sources not eligible for deduction. The High Court of Hyderabad held that income derived by a Primary Agricultural Co-operative Credit Society, by way of interest on fixed deposit made with nationalized banks, would be treated as business income eligible for deduction u/s 80P(2)(a). The Hon'ble Supreme Court condoned the delay and issued notices on the issue of treatment of '' interest on fixed deposits''.

6. COMMISSIONER OF INCOME TAX II AND ANR Vs. UP STATE BRIDGE CORPORATION LTD:

Diary No.24546/2017

Dated: September 4, 2017

Issue:

Whether the AO can exercise the power of rectification u/s 154 in a clandestine manner?

Decision:

The High Court of Allahabad relied upon the Supreme Court's judgment in Synco Industries Ltd. Vs. Assessing Officer, Income Tax, Mumbai, wherein Court has held, "if the gross total income of Assessee is determined as nil then there is no question of any deduction being allowed under Chapter VIA in computing the total income". In the present case assessment orders show that same were not of nil income, hence it cannot be said that deduction under Section 80 IA was not admissible. Scope of Section 154 is very limited. If there was any erroneous order passed by any AO which has caused prejudice to Revenue, the proper course would have been to take recourse to the remedy available elsewhere, for example Section 263 but in clandestine manner the power of rectification cannot be exercised. The High Court held that the power of rectification u/s 154 could not be exercised by AO in a clandestine manner.

The Hon'ble Supreme Court condones the delay and issues notice on the issue of ''power of rectification u/s 154''.

7. PRINCIPAL COMMISSIONER OF INCOME TAX Vs. SEABIRD MARINE SERVICES PVT LTD:

Diary No(s). 24242/2017

Dated: September 4, 2017

Issue:

Whether a marine company is entitled to claim deduction u/s 80IA(4) in respect of infrastructure facility provided at container freight stand?

Decision:

The High Court of Gujarat relied in the case of Container Corporation of India Limited Vs. ACIT as well as the decision of the Bombay High Court in the case of Commissioner of Income-tax II, Thane Vs. Continental Warehousing Corporation after considering CBDT Circular No.10 of 2005 it was held that looking at the facilities provided by Container Freight Stand, Container Freight Stand is an Inland Port as it carries out functions of warehousing, customs clearance and transport of goods from its location to sea-port and

vice versa by rail or by trucks in containers. Under the circumstances, the Tribunal has rightly deleted the disallowance of deduction claimed by the assessee u/s 80IA(4).

8. MONA MAHESH BHOJANI Vs. INCOME TAX OFFICER WARD 5(3)(4) AHEMADABAD:

Special Leave Appeal (c) No(s). 22723/2017

Dated: September 11, 2017

Issue 1:

Whether reopening initiated in case of an assessee who had not filed his return, can be claimed by the assessee to be based on 'change of opinion'?

Issue 2:

Whether when the AO has tangible material at his command to form a bonafide belief that income chargeable to tax has escaped assessment, the writ court would not interfere with the formation of such belief unless it is shown to be wholly perverse?

Decision:

In regard with Issue 1, The High Court of Gujarat noted that in the present case, the petitioner had not filed the return of income at all. The question of assessing the petitioner's income therefore does not arise. There is therefore no question of change of opinion at the hands of the AO. As long as the Assessing Officer has recorded valid reasons, he would be free to assess the income of the petitioner for the said assessment year. The High Court had held that reopening initiated in case of an assessee who had not filed his return, could not be claimed by the assessee.

With regard with Issue 2, The High Court of Gujarat held that as long as the AO has tangible material at his command to form a bonafide belief that income chargeable to tax has escaped assessment, the Court would not interfere with the formation of such belief unless it is shown to be wholly perverse. The primary facts which we have noticed are that even as per the assessee, the property in question was sold for a consideration of Rs.2.37 crores and the assessee would receive 50% share out of such sale proceed.

The other connected fact is that adopting valuation for the purpose of stamp duty upon presentation of the document for registration, in case of co-owner, the assessing authority has assessed the sale consideration for the purpose of capital gain to Rs.3.37 crores. Considering such facts, we do not find that the notice for reopening requires any interference in exercise of writ jurisdiction.

The Hon'ble Supreme Court held that dismisses the SLP, thus concurring with the opinion of High Court that no interference is warranted with the formation of belief for reopening, unless it is shown to be wholly perverse.

9. Commissioner of Income Tax, Kanpur Vs. Syndicate Bank Sector 18 Noida:

Diary No.14957/2017

Dated: September 15, 2017

Issue 1:

The former decision of the High Court of Allahabad observed the status of 'NOIDA' as 'local authority' whereas the latter decision of the High Court was observed that the status of 'NOIDA' as 'Corporation established by State'. Whether it will operate as resjudicata for the ITAT in deciding the impugned status?

Issue 2:

Whether 'NOIDA' being a 'Corporation' established by U.P. Industrial Area Development Act, is entitled for benefit of exemption, and any payment of interest by Bank to such Corporation does not require tax deduction at source as per Section 194A(3)(iii)(f)

Decision:

With regard to Issue 1, The High Court of Allahabad held that issue was decided that NOIDA is not a "local authority" within the meaning of Section 10(20) and this issue was answered against NOIDA. However, in present case, issue is whether NOIDA is a "Corporation" established by State Act and

this question has been answered in favour of NOIDA and against Revenue in a subsequent matter i.e. CIT & Anr Vs. Canara Bank. The Division Bench in judgment has also considered earlier Division Bench judgment and distinguished the same by observing that there was a dispute whether NOIDA would be a "local authority" or not while in a subsequent judgment the issue was whether NOIDA is 'Corporation' established by State Act or not. Therefore, earlier judgment confined to the question of status of NOIDA being "local authority" would not have any application to the issue raised subsequently. In view thereof, it cannot be said that judgment in Writ (Tax) No.1338 of 2005 could have operated as res-judicata and Tribunal has erred in deciding the case otherwise in holding that NOIDA has been established by State Act. Considering the fact that this issue is now covered by judgement of this Court in Income Tax Appeal No.64 of 2016 and has been answered against Revenue and in favour of NOIDA, in our view, all substantial questions of law are answered in favour of NOIDA.

With regard to Issue 2, The High Court held that New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA") is a 'Corporation' established by U.P. Industrial Area Development Act, 1976 (hereinafter referred to as "State Act") and, therefore, entitled for benefit of exemption and payment of interest by Bank to such authority does not require any deduction of tax at source in terms of Section 194-A (3) (iii) (f) of the aforesaid Act.

The Supreme Court condones the delay & issued notices to respective parties on the issue of TDS obligation u/s 194A(3) on the payment of interest by bank to statutory corporations.

10. Commissioner of Income Tax II & Ors Vs Rajesh Products Pvt Ltd:

Diary No(s). 24443/2017

Dated: September 18, 2017

Issue 1:

When 'Greater Noida Industrial Development Authority' is already notified by the State Government as 'Industrial Township', it cannot be described as 'municipality' u/s 10(20) to claim exemption from the rigours of section 194I?

Issue 2:

When lease deeds entered into between parties clearly points to the fact that small percentage of the agreed amounts were paid as part of lease premium & were towards acquisition of the asset, they fell consequently in the capital stream and were not 'Rents'?

Issue 3:

Whether amounts paid as part of the lease premium in terms of the time schedule(s) to the lease deeds executed between the builder and an industrial township, or annual payments for a specific period towards acquisition of lease hold rights are not subject to TDS, being capital payments. Whether amounts constituting annual lease rent, expressed in terms of percentage of the total premium for the duration of the lease, are rent, therefore subject to TDS?

Decision:

With reference to Issue 1, The High Court of Delhi that Greater Noida does not fall within the description of a muncipality u/s 10(20) to exempt it from the provisions of Section 194I. Article 243Q carves out an exception that certain units which provide municipal services and are industrial townships may be declared as such. Now this is the recognition of the fact that industrial townships per se need not be statutory bodies; they can be private entities as well. Therefore, the contentions are that it is a municipality and entitled to the benefit of section 10(20) are without merit.

With regard to Issue 2, The High Court held that clearly these payments are ''not rent''. The view reinforced by the Income Tax Circular No. 35/2016 dated 13th October, 2016 issued by the CBDT which clarified that "lump sum lease payments or one time lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long term lease hold rights over land or any other property are not payments in the nature of rent within the meaning of section 194I of the Act. As far as interest on overdue

or other such amounts are concerned, however, they cannot be called ''Capital" payments. The Court holds that since the GNOIDA insisted that its payments not be subjected to TDS, it should ensure that the appropriate amounts are credited or credit to the extent is applicable, is given to the lessees. A direction to that effect is given to the GNoida to ensure compliance; the revenue is consequently directed not to pursue coercive and penal proceedings against assessee’s u/s 201, 221 of the Income Tax Act. GNoida is one such institution established by the State Act. As pointed out by the ITAT, the UPIDA is an enabling enactment, which facilitates the setting up of development authorities like GNOIDA Consequently, the payments made by bank towards interest accruing on deposits, etc., are not deductible.

With regard to Issue 3, The High Court held that the amounts paid as part of the lease premium in terms of the time-schedule(s) to the lease deeds executed between the petitioners and the GNOIDA or bi-annual or annual payments for a limited or specific period towards acquisition of lease hold rights are not subject to TDS, being capital payments. The Court in its impugned order also held that when the lease deeds entered into between parties clearly points to the fact that a small percentage of the agreed amount were paid as part of lease premium and were towards acquisition of the assets, they fell consequently in the capital stream and were not 'Rents'.

The Hon'ble Supreme Court condones the delay and grants leave to the Revenue Department to defend their case on the issue of TDS obligation upon acquisition of lease hold rights.

11. M/s KRISHNA DEVELOPERS AND CO Vs DEPUTY COMMISSIONER OF INCOME TAX:

Special Leave to Appeal (C) No(s). 23760/2017

Dated: September 18, 2017

Issue:

If the original assessment was declared as invalid as having been completed without service of notice on the assessee within the statutory period is

justified. whether reopening on the basis of very same reasons on which the AO initially desired to make additions but had failed.

Decision:

The AO proceeded to pass an order of assessment discarding the assessee's objections of non-service of notice and in which he held that the income generated from the sale of land was a business income. Such order was set aside on the ground of invalidity, having been passed without service of notice, the order does not survive on eye of law. There is thus no original assessment. The reopening based on the belief of the Assessing Officer that the sale proceeds should be taxed as a business income and not as capital gains. It is not as if the Assessing Officer after noticing certain discrepancies in the return of the assessee, slept over his right to undertake the scrutiny assessment. The scrutiny assessment was initiated by issuance of notice u/s 143(2) of the Act on 23.9.2013. It was dispatched for service to the assessee on 24.9.2013 by speed post on the last known address. The Commissioner (Appeals) however, held that there was no proof of service of notice and since section 143(2) requires service of notice, the assessment was framed without complying with the mandatory requirements. The High Court Allahabad held that the reopening on the basis of the very same reasons on which the AO initially desired to make additions but had failed, was justified, if the original assessment was declared as invalid as having been completed without service of notice on the assessee within the statutory period.

The Hon'ble Supreme Court stays the operation of impugned order and issued notice to respective parties to appear for further hearing on the issue of validity of reopening.

12. PRINCIPAL COMMISSIONER OF INCOME TAX Vs M/s INTERNATIONAL AMUSEMENT LTD:

Diary No(s). 24216/2017

September 18, 2017

Issue:

Whether information sourced through investigation wing, would be ipso facto

sufficient to conclude assessment u/s 144?

Decision:

The AO was granted opportunity, not merely at the stage of reassessment but also during the appellate proceedings in the remand when it was possible to verify whether the investments were genuine and whether the credits claimed were genuine given that the amounts were received through normal banking channels, in the context of the assessee's claim that it needed funds for expansion. Having regard to these circumstances, the Court is of the opinion that no question of law arises. The High Court of Delhi held that information sourced through investigation wing, would not be ipso facto sufficient to conclude assessment u/s 144.

The Hon'ble Supreme Court condones the delay and dismisses the SLP by concurring with the opinion of High Court that information sourced through Investigation Wing, is not sufficient for concluding assessment u/s 144.

13. UNION OF INDIA & ORS Vs. M/s TATA TEA CO LTD & ANR

CA No. 9178 of 2012

Dated: September 20, 2017

Issue 1:

Whether entry 82 of the seventh schedule of the constitution- taxes on income- also includes tax on dividend declared by tea cultivating company?

Issue 2:

Whether provisions on Section 115O do trench on powers of the State Legislature to tax agricultural income but such incidental trenching does not warrant annulment of legislation.

Issue 3:

Whether when the dividend is declared and paid to company’s shareholders, it is not impressed with character of source of its income.

Decision:

With regard to Issue 1 & 2, Entry 82 embraces entire field of "tax on income". What is excluded is the agricultural income which is contained in entry 46 of List II. Income as defined in section 2(24) of the 1961 Act, is the inclusive definition including 'specifically' dividend'. Dividend is statutorily regulated and under the Articles of Association are required to be paid as per the rules of the companies to the shareholders.

Section 115O pertains to declaration, distribution or payment of dividend by domestic company and imposition of additional tax on dividend is thus clearly covered by subject as embraced by Entry 82. The provisions of section 115O cannot be said to be directly included in the field of tax on agricultural income. Even if the sake of argument it is considered as the provision trenches the field covered by Entry 46 of the List II, the effect is only incidental and the legislation cannot be annulled on the ground of such incidental trenching in the field of the state legislature. Looking to the nature of the provision of Section 115O and its consequences, the pith and substance of the legislation is clearly covered by Entry 82 of List I.

With regard to Issue 3, Earlier it was taxed in the hands of the shareholder under Income Tax Act,1961. But under the Finance Act 1997, it was made taxable under the hands of the company when additional tax was imposed. While considering the nature of dividend in the case of Mrs. Bacha F. Guzdar, Bombay vs. Commissioner of Income Tax, Bombay, it was held that although when the initial source which has produced the revenue is land used for agricultural purposes but to give to the words 'revenue derived from land', apart from its direct association or relation with the land, an unrestricted meaning shall be unwarranted. Again in Commissioner of Income Tax, Calcutta vs. Nalin Behari Lal Singha, etc. an observation was made that shares of its profits declared as distributable among the shareholders is not impressed with the character of the profit from which it reaches the hands of the shareholder. Thus, there is substance in the submission of the Revenue that when the dividend is declared to be distributed and paid to company's shareholder it is not impressed with character of source of its income;

The provisions of Section 115O are well within the competence of Parliament. To put any limitation in the said provision as held by the High Court that additional tax can be levied only on the 40% of the dividend income shall be altering the provision of Section 115O for which there is no warrant. The High Court having upheld the vires of Section 115O no further

order was necessary in that writ petition and hence, the appeal of Revenue is allowed.

The Hon'ble Supreme Court dismissed the Petition.

14. ASSISTANT COMMISSIONER OF INCOME TAX vs SEABIRD MARINE SERVICES PVT LTD

Diary No(s). 24921/2017

Dated: September 22, 2017

Issue:

Whether assessment can be reopened by the AO, when in the previous assessment the AO had made detailed inquiry as to exemption u/s 80IA?

Whether in such case reassessment is not maintainable after a period of 4 years of the first assessment?

Decision:

The High Court of Gujarat held that the claim of the assessee u/s 80IA of the Act was specifically gone into in detail by the AO, while framing scrutiny assessment u/s 143(3) of the Act. The entire material which was produced on record; including the Certificate issued by the Customs authorities as well as after considering inspection by the Additional Commissioner of Income-tax, Jamnagar in respect of the aforesaid CFS, the Assessing Officer allowed the claim of the assessee and granted benefit under Section 80IA(4) of the Act. Under the circumstances, the impugned re-assessment is nothing but a change of opinion on the part of the subsequent Assessing Officer. Under the circumstances, the reopening of the concluded scrutiny assessment under Section 143 [3] of the Act and that too after a period of four years is unsustainable and/or not maintainable.

The Hon'ble Supreme Court condones the delay and grants leave to the Revenue Department to defend their case on the validity of reopening, in case claim of the assessee was accepted during the scrutiny of assessment.