

Legal Decisions¹

DIRECT TAXES



Income Tax

LD/64/100

Commissioner of Income Tax

vs.

Arun Kumar Khetwat

2nd December, 2015

Section 271(1)(c) of the Income-tax Act, 1961—revision of return before notice under Section 148 issued.

No penalty levied where the assessee suo-moto filed a revised return, including additional undisclosed income admitted during survey under Section 133A of the Act, before the Notice under Section 148 of the Act was issued.

The assessee filed return of income for assessment year 2004-05 showing total income of ₹2,04,380, which was duly processed under Section 143(1) of the Income-tax Act, 1961 ('the Act'). A survey under Section 133A of the Act was conducted at the business premises of the assessee, during which it was detected that he had made investment of ₹30 lakh with M/s. Khetawat Stock Broking Ltd, relevant to the assessment year 2004-05. On being confronted with source of investment, the assessee admitted that the source of investment was the undisclosed income from his business activities. After survey, the assessee filed a revised return showing a total income of ₹32,04,350/- which included the additional income of ₹30 lakh.

Assessing Officer ('the AO') issued notice under Section 148 of the Act. The AO accepted the revised return of income of the assessee and the assessment was completed under Section 143(3)/147 of the Act with an assessed total income of ₹32,25,090. After assessment was complete, penalty proceedings under Section 271(1)(c) of the Act were initiated by the AO and penalty amounting to 100% of tax was imposed on the ground that the assessee disclosed additional income of ₹30 lakh only after the detection by the department and mere showing of additional income in a return filed in response to notice under Section 148 of the Act does not give immunity from penal action to the assessee.

The CIT(A) allowed the appeal of the assessee and held that while it may be true that had it not been for the Survey, the additional income might not have been disclosed, it was not right for the AO to have ignored the subsequent bona fides of the assessee and the absence of any positive evidence of concealment

being brought to the fore by the AO in the assessment proceedings other than the fact of admission of additional income. The CIT(A) relied on the decision of the Hon'ble Supreme Court in *Rajasthan Spinning & Weaving*, where it was held that the AO still has to establish the conditions for the levy of penalty, and that it is the assessment proceedings and return of income and not the Survey proceedings which are relevant for the levy of Penalty. On further appeal by the Revenue, the Tribunal dismissed the appeal and upheld the order of the CIT(A).

The Hon'ble High Court held that *since admittedly, the revised return for the said assessment year was filed by the assessee before issuance of notice under Section 148 of the Act, the penalty cannot be levied.*

LD/64/101

Pr. Commissioner of Income Tax

vs.

Gujarat State Fertilizers & Chemical Ltd.

22nd December, 2015

Section 14A and 148 of the Income Tax Act, 1961.

Reopening a case to apply Rule 8D read with Section 14A of the Act invalid as disallowance under Section 14A of the Act already made in the original Section 143(3) assessment order; results to change of opinion.

While passing an order under Section 143(3) of the Income-tax Act, 1961 ('the Act') for assessment year 2006-07, the Assessing Officer had made the disallowance of Rs. 142.82 lakh, being 10% of exempt income (Dividend) under Section 14A of the Act. Later, in view of the decision of the ITAT Spl Bench, Mumbai in case of *M/S. DAGA Capital Management Pvt. Ltd vs. ITO*, where it was held that provisions of Section 14A(2) & (3) are clarificatory in nature and would apply retrospectively and Rule 8D would also apply accordingly, the AO observed that he was required to make disallowance as per the provisions of Rule 8D which amounts to ₹761.34 lakh. Further, the AO observed that while computing the book profit, assessee had reduced Fringe Benefit Tax amounting to ₹4,80,00,000 from the net profit to arrive at the book profit for the purpose of MAT and in the view of the AO, it was irregular and in contravention to the provisions of Section 2(43) of the Act. In view of the above, the AO reopened the assessment by issuing a notice under Section 148 of the Act within 4 years from the end of the relevant assessment year.

¹ Contributed by CA. Sahil Garud and ICAI's Editorial Board Secretariat.

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The assessee challenged the reopening of the assessment.

The Tribunal held that the reopening was bad in law and observed that *'it is a settled law that even in case of reopening of assessment within a period of 4 years from the end of relevant assessment years, the Assessing Officer has to have reasons to believe that income chargeable to tax has escaped assessment on the basis of tangible material. Further, when all material facts necessary for determination of the income has been disclosed by the Assessee and the Assessing Officer has taken a particular view on those disclosed facts while passing the assessment order in regular proceedings, then without anything more, it would not be open for the Assessing Officer to reopen the assessment proceedings as reopening in such a case would be reopening on account of change of opinion.'* The Tribunal considering the facts of the instant case and the original order of the AO, opined that the AO had formed an opinion about the disallowance to be made under Section 14A of the Act and in such a situation, the reopening on account of disallowance under Section 14A of the Act would be change of opinion. Further, with respect to the addition of FBT to book profit, the Tribunal noted that CBDT in Circular No.8/05 dated 29.08.2005 has opined that FBT is allowable deduction in computation of book profit under Section 115JB of the Act and in such a situation in the present case, it cannot be said that the assessee's action in not adding the FBT to book profit has resulted into escapement of income.

The Hon'ble High Court opined that the Section 14A issue was examined by the Assessing Officer in the original order of assessment and thus, any reconsideration would only amount to change of opinion. With respect to the second element namely, non addition of FBT benefit tax while considering the book profit for the purpose of Section 115JB of the Act, Hon'ble High Court agreed with the view of the Tribunal.

LD/64/102

Commissioner of Income Tax

vs.

Rittal India Pvt. Ltd.

24th November, 2015

Claimed allowance of balance depreciation u/s. 32(1)(iia) of the Income-tax Act 1961 – held eligible for carry-forward to subsequent AY.

Additional depreciation allowed u/s 32(1)(iia) of the Act is a onetime benefit to encourage industrialization, and the provisions related to it

have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance; Upholds ITAT ruling reasoning that the intention of the legislation was absolutely clear, that assessee would be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one AY, if certain condition was not fulfilled, but that would not restrain the assessee from claiming the balance of the benefit in the subsequent AY.

The assessee, Rittal India Pvt. Ltd., was an existing industrial undertaking, when it had acquired and installed new plant and machinery in FY 2006-07 and claimed 50% of additional 20% depreciation (i.e. 10% additional depreciation) u/s. 32(1)(iia) of the Income-tax Act 1961 in the corresponding AY 2007-08. This was so claimed because admittedly the new machinery was acquired after October 1, 2006 and before March 31, 2007; meaning thereby that it was put to use for the purpose of business for a period of less than 180 days.

The assessee claimed allowance of the balance 10% depreciation in next AY 2008-09, so that the benefit of the total 20% allowable depreciation u/s. 32(1)(iia) was allowed. The AO as well as the CIT (A) disallowed the claim of assessee, whereas the Tribunal allowed the appeal of the assessee.

Aggrieved, the Revenue preferred an appeal before Karnataka HC.

HC considered the question *"Whether the Tribunal was correct in holding that additional depreciation allowed u/s. 32(1)(iia) is a one time benefit to encourage industrialization and the relevant provisions has been construed reasonably and purposive without appreciating that the additional depreciation is allowed in the year of purchase and if in the year of purchase, the assessee is eligible only for 50% depreciation, the balance 50% cannot be carried forward for the subsequent year on the claim cannot be allowed in any other year?"*

HC analysed the provision of Section 32 and noted that Clause (ii)(a) of Section 32(1) was substituted by the Finance Act, 2005, applicable w.e.f. April 1, 2006. Prior to that, a proviso to the said Clause existed, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant AY.

HC held *"...language used in Clause (iia) of the said Section clearly provides that 'a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)'. The word 'shall' used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation.*

By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed." HC further held that the intention of the legislation was absolutely clear, that the assessee would be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one AY, if certain condition was not fulfilled, but that would not restrain the assessee from claiming the balance of the benefit in the subsequent AY.

Thus, dismissing the appeal of Revenue, the Karnataka HC upheld ITAT ruling holding that additional depreciation u/s. 32(1)(iia) is a one-time benefit to encourage industrialisation, and the provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance.

LD/64/103

Commissioner of Income Tax, Delhi vs.

Sharda Sinha

22nd December, 2015

Sum received by assessee on termination of employment contract in order to compensate for loss of source of income is a capital receipt not-chargeable to tax; "Mere fact that the Assessee was free to earn through other sources would not make a difference to this position"; Follows co-ordinate bench ruling in Khanna and Annadhanam.

The assessee (deceased) was a journalist by profession and was appointed as the Foreign Correspondent in India of a German news magazine Der Spiegel at a monthly flat rate honorarium of \$250 in addition to a further payment for any published contributions whose copyright would be with the German publisher. During the concerned period, Der Spiegel terminated the contract and paid compensation of ₹53,82,000 for the association of the past 23 years and loss of work space. The assessee claimed this amount as a revenue receipt but on revising the return, it was claimed to be a capital receipt. The AO denied assessee's revised claim holding that the termination of contract with Der Spiegel did not mean that the Assessee had lost his right of authorship in future "for all the publications in the universe". CIT(A) and ITAT ruled in favour of assessee noting that compensation was an *ex-gratia* payment as a gesture of goodwill which could not be

regarded as payment for past services for which the contractual remuneration had already been paid. The contract with Der Spiegel appointing the assessee as its foreign correspondent in India was a capital asset and the compensation received was thus a capital receipt.

HC observed that publisher was paying a lumpsum amount upon termination as sign-off compensation for performance of authorship/professional services for a continuous period of 23 years. A letter written by the publisher acknowledged that the compensation was being paid "Due to the loss of his work place and in consideration of his long time association". These factors had a bearing on the character of the receipt in the hands of the Assessee. Indeed, this was compensation for loss of an income-generating asset.

HC concurred with the conclusion of the CIT(A) that the sum paid to the Assessee was "to compensate for the abrupt loss of source of income" and that the termination of contract had fatally injured the assessee's only source of income for the last 20 years. A mere fact that the Assessee was free to earn through other sources would not make a difference to this position. Reliance was placed upon the coordinate bench ruling in the case of Khanna and Annadhanam vs. Commissioner of Income Tax [(2013) 351 ITR 110 (Del)].

HC thus ruled in favour of the assessee.

Service Tax

LD/64/104

M/s Bharat Forge Ltd.

vs.

Commissioner of Central Excise, Pune

24th November, 2015

Section 80 of The Finance Act, 1994 - Penalty not to be imposed in certain cases

Penalty deleted u/s 80 of the Finance Act since appellant had no intention to avoid payment of service tax which would have been available to it as Cenvat credit and non-payment would not result in any financial benefit; Assessee paid fees to lead-managers abroad under bonafide belief of non levy of service tax, since the funds were raised abroad and the recipient was located abroad, and the service was consumed abroad.

The assessee availed external commercial borrowings (ECB) in the form of convertible foreign currency bonds in April 2005 and April 2006 and raised capital in overseas market in the form of Global Depository Receipts (GDR). To raise funds for their activities, the appellant availed merchant banking services from Citigroup Global Markets Ltd. (Citigroup) and J. P. Morgan Securities Ltd. based

abroad and who did not have an office in India and who acted as Lead Managers for the two issues of ECB and GDR. Certain fees were paid by the assessee to the Lead Managers.

Revenue authorities stated that the service of merchant banking was leviable to service tax u/s 65(12) r/w Section 65(105)(zm) of the Finance Act 1994. Further Revenue stated that u/s 66A of the Finance Act, 1994, where any taxable service is provided by a person who has an established business in a country other than India, and is received by a person who has his fixed establishment of business in India such service is taxable service. Revenue thus held that the assessee was liable to pay service tax u/s 66A of the Finance act 1994 read with Taxation of Services (provided from outside India and received in India) Rules 2006. Penalties u/s 76, 77 and 78 of Finance Act were also imposed.

The assessee paid entire amount of service tax along with interest thereon. Before the CESTAT, the assessee did not contest the levy of service tax and interest thereon, however argued to take a lenient view for waiver of penalty. The assessee argued that it was

under genuine belief that tax was not payable since the funds were raised abroad, the entities which had provided the service of raising of funds were located abroad, the service was consumed outside India as the funds were raised outside India through the issue of ECB and GDR. Further assessee argued that, in any case, the service tax paid by it would be available as Cenvat credit which it had availed.

CESTAT observed that the assessee paid the service tax on 18.12.2007 whereas the show cause notice was issued on 11.08.2008 and adjudicated on 18.08.2011. CESTAT remarked that the prompt payment of service tax even before the issue of show cause notice showed the genuineness of the assessee and it was a case of bonafide belief of the assessee that service tax was not payable. Further, the CESTAT observed the assessee had no intention to avoid payment of service tax which would have been available to it as Cenvat credit, and non-payment would not result in any financial benefit to the assessee.

CESTAT thus directed to waive the impugned penalty u/s 80 of the Finance Act. ■

ICAI News



Notification

The Institute of Chartered Accountants of India

[Set up by an Act of Parliament]

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA

NOTIFICATION

19 January, 2016

No. 13-CA (EXAM)/M/2016: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Intermediate (IPC) and Final examinations will be held on the dates given below at the following places provided that sufficient number of candidates offer themselves to appear from each centre.

INTERMEDIATE (IPC) EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the

Chartered Accountants Regulations, 1988]

Group-I: 3rd, 5th, 7th & 9th May 2016

Group-II: 11th, 13th & 15th May 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

FINAL EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (ii) of the Chartered Accountants Regulations, 1988.]

Group -I: 2nd, 4th, 6th & 8th May 2016

Group -II: 10th, 12th, 14th & 16th May 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

PLACES OF EXAMINATION CENTRES IN INDIA:

| Sl. No. | Name of the Cities | Sl. No. | Name of the Cities | Sl. No. | Name of the Cities |
|---------|--------------------|---------|--------------------|---------|--------------------|
| 1 | AGRA | 2 | AHMEDABAD | 3 | AHMEDNAGAR |
| 4 | AJMER | 5 | AKOLA | 6 | ALAPPUZHA |
| 7 | ALIGARH | 8 | ALLAHABAD | 9 | ALWAR |
| 10 | AMBALA | 11 | AMRAVATI | 12 | AMRITSAR |

| Sl. No. | Name of the Cities | Sl. No. | Name of the Cities | Sl. No. | Name of the Cities |
|---------|--------------------|---------|--------------------|---------|--------------------|
| 13 | ANAND | 14 | ANANTAPUR | 15 | ASANSOL |
| 16 | AURANGABAD | 17 | BAREILLY | 18 | BATHINDA |
| 19 | BEAWAR | 20 | BELGAUM | 21 | BELLARY |
| 22 | BENGALURU | 23 | BERHAMPORE | 24 | BHARATPUR |
| 25 | BHARUCH | 26 | BHAVNAGAR | 27 | BHILWARA |
| 28 | BHIWANDI | 29 | BHIWANI | 30 | BHOPAL |
| 31 | BHUBANESWAR | 32 | BHUJ | 33 | BIKANER |
| 34 | BILASPUR | 35 | CHANDIGARH | 36 | CHENNAI |
| 37 | CHITTORGARH | 38 | COIMBATORE | 39 | CUTTACK |
| 40 | DEHRADUN | 41 | DELHI / NEW DELHI | 42 | DHANBAD |
| 43 | DHULE | 44 | DURG | 45 | DURGAPUR |
| 46 | ERNAKULAM | 47 | ERODE | 48 | FARIDABAD |
| 49 | FATEHABAD | 50 | GANDHIDHAM | 51 | GANDHINAGAR |
| 52 | GHAZIABAD | 53 | GORAKHPUR | 54 | GUNTUR |
| 55 | GURGAON | 56 | GUWAHATI | 57 | GWALIOR |
| 58 | HISAR | 59 | HUBLI | 60 | HYDERABAD |
| 61 | ICHALKARANJI | 62 | INDORE | 63 | JABALPUR |
| 64 | JAIPUR | 65 | JALANDHAR | 66 | JALGAON |
| 67 | JAMMU | 68 | JAMNAGAR | 69 | JAMSHEDPUR |
| 70 | JHANSI | 71 | JHUNJHUNU | 72 | JIND |
| 73 | JODHPUR | 74 | KAITHAL | 75 | KAKINADA |
| 76 | KANNUR | 77 | KANPUR | 78 | KARIMNAGAR |
| 79 | KARNAL | 80 | KISHANGARH | 81 | KOLHAPUR |
| 82 | KOLKATA | 83 | KOLLAM | 84 | KOTA |
| 85 | KOTTAYAM | 86 | KOZHICODE | 87 | KUMBakonam |
| 88 | KURNOOL | 89 | LATUR | 90 | LUCKNOW |
| 91 | LUDHIANA | 92 | MADURAI | 93 | MALAPPURAM |
| 94 | MANGALORE | 95 | MAPUSA (GOA) | 96 | MARGAO (GOA) |
| 97 | MATHURA | 98 | MEERUT | 99 | MORADABAD |
| 100 | MUMBAI | 101 | MUZAFFARNAGAR | 102 | MYSORE |
| 103 | NAGPUR | 104 | NANDED | 105 | NASHIK |
| 106 | NAVI MUMBAI | 117 | NAVSARI | 108 | NEEMUCH |
| 109 | NELLORE | 110 | NOIDA | 111 | ONGOLE |
| 112 | PALAKKAD | 113 | PALI MARWAR | 114 | PANIPAT |
| 115 | PANVEL | 116 | PATIALA | 117 | PATNA |
| 118 | PIMPRI-CHINCHWAD | 119 | PONDICHERRY | 120 | PUNE |
| 121 | RAIPUR | 122 | RAJAMAHENDRAVARAM | 123 | RAJKOT |
| 124 | RANCHI | 125 | RATLAM | 126 | REWARI |
| 127 | ROHTAK | 128 | ROURKELA | 129 | SAHARANPUR |
| 130 | SALEM | 131 | SAMBALPUR | 132 | SANGLI |
| 133 | SANGRUR | 134 | SATARA | 135 | SHIMLA |
| 136 | SHIMOGA | 137 | SIKAR | 138 | SILIGURI |
| 139 | SIRSA | 140 | SIVAKASI | 141 | SOLAPUR |
| 142 | SONEPAT | 143 | SRI GANGANAGAR | 144 | SRINAGAR |
| 145 | SURAT | 146 | SURENDRANAGAR | 147 | THANE |
| 148 | THIRUVANANTHAPURAM | 149 | THRISSUR | 150 | TINSUKIA |
| 151 | TIRUCHIRAPALLI | 152 | TIRUNELVELI | 153 | TIRUPATI |
| 154 | TIRUPUR | 155 | TUTICORIN | 156 | UDAIPUR |
| 157 | UDUPI | 158 | UJJAIN | 159 | VADODARA |
| 160 | VAPI | 161 | VARANASI | 162 | VASAI |
| 163 | VELLORE | 164 | VIJAYAWADA | 165 | VISAKHAPATNAM |
| 166 | WARANGAL | 167 | YAMUNA NAGAR | | |

PLACES OF EXAMINATION CENTRES OVERSEAS:

| | | | |
|--------------|----------|----------------------|-----------|
| 1) ABU DHABI | 2) DUBAI | 3) KATHMANDU (NEPAL) | 4) MUSCAT |
|--------------|----------|----------------------|-----------|

Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of The Secretary, **The Institute of Chartered Accountants of India, payable at New Delhi only.**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Intermediate (IPC) and Final examinations are required to be made either online at <http://icaiaexam.icaai.org> **free of cost (i.e. ₹1000/- for Intermediate (IPC) & Final candidates for the cost of application form shall not be charged if applications are filled in online)** or in the relevant prescribed form, copies of which may be obtained from the **Deputy Secretary (Examinations), The Institute of Chartered Accountants of India, 'ICAI BHAWAN', Indraprastha Marg, New Delhi-110002** on payment of ₹1000/- per application form in respect of Intermediate (IPC) and Final Examination candidates. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **3rd February, 2016.**

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Deputy Secretary (Examinations) at New Delhi not later than **24th February, 2016.** However, applications will also be received at Delhi Office after **24th February, 2016** and upto **2nd March, 2016** with late fee of ₹600/-. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bengaluru, Ernakulam, Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara upto 2nd March, 2016. Candidates residing in these cities are advised to take advantage of this facility. Applications received after **2nd March, 2016** shall not be entertained under any circumstances.

The candidates who apply online at <http://icaiaexam.icaai.org> from **3rd February, 2016 to 24th February, 2016** and remit the fee online by using either VISA or MASTER Credit/Debit Card shall not be charged ₹1000/- in case of Intermediate (IPC) & Final examination (i.e. cost of application form fee). They shall however, be required to remit additional ₹600/- towards late fee in case the application online is made after **24th February, 2016** and upto **2nd March, 2016.**

The fees payable for the various examinations are as under:

| INTERMEDIATE (IPC) | |
|-------------------------------------|----------|
| For Both the Groups / Unit - 9 | ₹ 1900/- |
| For one of the Groups / Unit 1 to 8 | ₹1200/- |
| FINAL EXAMINATION | |
| For Both the Groups | ₹2700/- |
| For one of the Groups | ₹1500/- |

Candidates of Intermediate (IPC) and Final examination opting for Dubai /Abu Dhabi / Muscat are required to remit, US\$ 420 and US\$ 480 respectively or their equivalent Indian Currency irrespective of whether the candidates appears in a group or in both the groups or in a unit.

Candidates of Intermediate (IPC) and Final Examinations opting for Examination Centre at Kathmandu are required to remit Indian ₹2700/- and Indian ₹3600/- respectively or their equivalent relevant foreign currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

OPTION TO ANSWER PAPERS IN HINDI:

Candidates of Intermediate (IPC) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information Sheets attached to the relevant application form.

(V. SAGAR)
SECRETARY