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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
<u>Sushiladevi R. Somani Vs. ACIT</u> <u>[ITA No. 5795/Mum/2016 dated 26th August 2022 Mumbai Tribunal]</u>	In order to compute long term capital gains for shares acquired prior to 1 st April 1981, whether the cost of acquisition has to be taken as the book value of the net asset or fair market value of net asset?	Hon'ble Mumbai Tribunal referring to section 2(22B) of the Income-Tax Act, 1961 ("IT Act"), has held that private company shares acquired prior to 1 st April 1981 can be valued at fair market value of net asset as on 1 st April 1981 for the purpose of computing capital gains.
Indirect Tax		
<u>Daya Shanker Singh Vs. State of Madhya Pradesh</u> <u>[2022-TIOL-1122-HC-MP-GST]</u>	Whether expiry of the e-way bill by few hours before reaching its destination amounts to tax evasion?	Hon'ble MP High Court set aside the penalty order and directed authority to refund it within 30 days stating that expiry of E-way appears to be bonafide and without intent to evade tax.

The brief analysis of above referred decisions and rulings are given below.

Case 1 – Sushiladevi R. Somani Vs. Assistant Commissioner of Income Tax (ITA No. 5795/Mum/2016 dated 26th August 2022 Mumbai Tribunal)

Facts in brief & Issue Involved:


- ♦ Taxpayer sold 930 equity shares of Somani & Co. Private Limited (SCPL) for total consideration of INR 8.46 corers. Out of 930 shares, 225 share were acquired prior to 1st April 1981 and balance after said date.
- ♦ While computing the capital gains, for share acquired post 1st April 1981 taxpayer took cost of acquisition at INR 100 per share, but for share acquired prior to 1st April 1981 the of cost of acquisition was taken at fair market value (FMV) as on 1st April 1981 at INR 3,833 per share.
- ♦ The valuation was done by dividing the net fair market value of the assets of SCPL by the total number of equity shares and the FMV of land, being one of the most valuable assets of SCPL, was supported by the report of Government Approved Valuers.
- ♦ Assessing Officer (“AO”) rejected the claim of the taxpayer for taking cost of acquisition of shares acquired prior to 1st April 1981 at INR 3,833 per share, stating that the taxpayer has taken land as the base for determining the FMV of shares. The AO observed that price of the shares traded did not change in the subsequent years, so as to justify the FMV considered by the taxpayer and the value of shares ought to have been determined by comparative precedents like the value which other individuals would pay to purchase the same commodity.
- ♦ Even Commissioner of Income-tax (Appeals) held that the taxpayer contention was wrong since she had considered the value of one of the assets and not the net worth. It was also held that the value of asset shall be estimated to be the price which it would fetch if sold in open market on the valuation date and also stated that Rule 1D of the Wealth Tax Act, which although omitted by the Wealth Tax Rules, can be used to determine the value of unquoted shares.

Observations & Decision of Tribunal

- ♦ Hon'ble Tribunal has held that under the section 2(22B) of the Act, the Taxpayer has the option to substitute its cost of acquisition by FMV as on 1st April 1981. Taxpayer had considered the intrinsic value of shares, considering the value of land based on the Government Approved Valuer report, was a reasonable method of ascertaining the FMV of the shares.
- ♦ Tribunal further held that the mere fact that the shares issued after 1st April 1981 were at face value of INR 100 cannot negate the FMV of the shares issued prior to 1st April 1981.
- ♦ Tribunal also observed that section 2(22B) of the IT Act does not require an actual price at which the asset is sold but would also include hypothetical price which such a capital asset would fairly fetch in an open market.
- ♦ It was further held that Rule 1D of the Wealth Tax Rules could not be relied upon, since it is not into service as of now and it could at best be of good guidance, but it is still a step short of legal force.
- ♦ Lastly, it was held that in any event, if the AO had any doubts regarding the correctness of the valuation of the shares in question, it was open for him to refer the matter to the Departmental Valuation Officer.

NASA Comments:

- ♦ Finance Act 2017 has shifted the base year from 1st April 1981 to 1st April 2001. Hence, in case shares of private / unlisted companies acquired prior to 1st April 2001, the cost can be substituted with its FMV. Section 55(2) of the Act states that for the purpose of valuing immovable property acquired prior to 1st April 2001, the FMV of the property cannot exceed the Stamp Duty Value. Thus, section 55(2) of the IT Act also upholds the contention of taxpayer for substituting the book value of the immovable property value with FMV. Determination of FMV of unlisted shares will depend on facts of each case, but the above decision lays down the principle that intrinsic value of shares based on valuation report could be the FMV.

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- ♦ Further, section 55A of the IT Act requires the AO to refer to the Departmental Valuation Officer, where he has doubts regarding the correctness of the fair valuation of shares, however, same was not done by the AO in the above case.

INDIRECT TAX

Case 1 – Daya Shanker Singh Vs. State of Madhya Pradesh [2022-TIOL-1122-HC-MP-GST]

Facts in brief & Issue Involved

- ◆ Petitioner generated an e-way bill on 17th May 2022 for movement of TMT Bars from Raipur to Dindori. The said e-way bill was expiring on 19th May 2022 at 12.00 am.
- ◆ The vehicle reached Dindori on 19th May 2022 which was well within the time mentioned in the E-way bill. However, while moving the goods to the weigh bridge, the Assistant Commissioner intercepted the vehicle at 04:35 am on 20th May 2022 and demanded relevant documents.
- ◆ The officer detained the goods in his custody stating that e-way bill got expired on dated 19th May 2022 at 12.00 am and issued FORM MOV-02.
- ◆ The written reply of the petitioner dated 24th May 2022 was rejected and FORM MOV-06 was issued followed by FORM MOV-07 specifying the penalty amount of INR 6,82,030.
- ◆ Being aggrieved by the penalty order, the petitioner filed the writ petition.

Contentions of the Petitioner

- ◆ Petitioner stated that proceedings initiated were not justifiable and the principles of natural justice in terms of section 126 of CGST Act were not followed, which clearly provides that no penalty should be imposed for minor breaches or procedural requirements or omission.
- ◆ There was no revenue loss to the exchequer. The intention of introducing e-way bill mechanism was to keep a check on the movement of goods without tax invoice and

to regulate tax evasion. Hence, the penalty order issued for expiry of e-way bill was unjustifiable and runs contrary to object of the scheme.


- ♦ Reliance was placed on following judgements where penalty was set aside as the evasion of tax could not be established:
 - Satyam Shivam Papers Pvt Ltd Vs. Asst. Commissioner, ST & others
 - Robbins Tunneling & Trenchless Technology (India) Pvt Ltd Vs. State of Madhya Pradesh

Observations & Decision of High Court

- ♦ High court observed that the respondent could not establish the existence of any element of tax evasion, fraudulent intent, or negligence on the part of the petitioner.
- ♦ The principle of natural justice was statutorily recognized and ingrained in section 126(1)(3) of the CGST Act. Law makers have taken care of doctrine of proportionality while bringing sub section (1) of the section 126 in the statute book. The punishment should be commensurate to the breach is the legislative mandate as per sub-section (1) of Section 126 of CGST Act.
- ♦ The delay of almost 4:30 hours before which e-way bill stood expired appeared bonafide in the eyes of the Court.
- ♦ Hon'ble High Court set aside the penalty order and also directed that refund of the penalty amount paid should be made within 30 days.


NASA Comments

- ♦ This decision lays down an important principle that penalty can be levied only in case of negligence and intention to evade tax. The principle of natural justice is ought to be followed and penalty should not be levied for minor or procedural lapses. Further, the doctrine of proportionality should also be followed to ensure



that punishment should not be disproportionate to the breach or non-compliance. This is indeed a good decision and can help the taxpayer in genuine cases.

We will be glad to provide any elaboration or elucidation you may need in this regard.



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