R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

FEBRUARY 2022

"Life is like riding a bicycle.
To keep your balance,
you must keep moving."

- CA Gaurav Sanghavi

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Case Laws:

1) Issue Involved:

iPad is a communicating device and not a computer, hence, ineligible for higher rate of depreciation of 60 per cent

- **In the ITAT of Amritsar, in case of Kohinoor Indian (P.) Ltd v. ACIT, Jalandhar Circle-1(16 August 2021)**

GIST OF CASE

The assessee purchased an apple iPad during the year and claimed depreciation at the rate of 60 per cent by treating the same as a computer.

The Assessing Officer held that Apple had two other variants: iPhone and Mac Book. The Assessing Officer held that the iPad had more similarities with iPhone and thus was a phone eligible for depreciation at rate of 15 per cent and not a computer on ground that (i) iPad and iPhone shared the same operating system; (ii) Both the iPad and iPhone contained an inbuilt 2G/3G/4G connectivity and GPS, primarily an inherent mobile phone feature, whereas Mac Book did not contain the same and (iii) The sim card and mobile network come under iPad and iPhone and not Mac Book.

On appeal, the Commissioner (Appeals) upheld the order passed by the Assessing Officer, contending that the iPad neither had a USB port nor had a CD drive. Further, the iPad was not compatible with Windows, and hence, there was no question of considering the iPad as a computer.

HELD

On appeal to the Tribunal held that Under the Income-tax Act there is no definition of computer. However, the computers are considered to be part of the plant under broader definition of tangible things in section 32 of the Income-tax Act. Admittedly an assessee is entitled to depreciation on building, machinery plant or furniture if it is wholly or partly owned by the assessee and is used by the assessee for the purpose of business or profession.

If iPad falls in the definition of computer, then high rate of depreciation is allowable however if it falls within the definition of mobile phone then lower rate of depreciation is allowable.

No definition of plant/computer has been provided by the Income-tax Act. In the schedule of depreciation, it only mentioned as 'computers include computer software'.

The term computer is defined under Information Technology Act in section 2 (1) (i) to mean any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic, and memory function by manipulation of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system of computer network.

Undoubtedly, iPad and smart mobile phones are high-speed data processing devices. Both are akin to computer as per the definition of computer under Information Technology Act, being capable of processing, assimilating. collating information, storage of data means of communication for audio and video calls, email, WhatsApp, Facebook, YouTube, can be used for accounting, automation, surveillance, gaming etc. In terms of storage both are having high internal memory with expandable memory. Beside that now both are having additional feature of storing the information on cloud by taking on rent the cloud space of Google, Samsung, Apple etc. Transfer/receipt of data is no more dependent upon availability of USB/C port etc., data are capable of being received and transferred with the help of internet, Bluetooth. personal hotspot. airplay, airdrop etc. Undoubtedly FaceTime video and audio calls can be made with the use of iPad even if the user is on Wi-Fi mode, hence to say that iPad in question was not capable of making calls was not correct. In fact, there is hardly any difference between the Tablets (iPad) and smartphone as are available in the market on the basis of usage etc., however the only difference is size of screen, as the size of screen in tablet (iPad) is bigger in comparison to phones. however, this distinction of size of screen is also no more available, as many foldable mobile phones are available in the market.

Having noticed that the IPad and smartphones are akin to computers within the meaning of computers, as per the Information Technology Act now it is to be found out whether the definition of computer given under the Information Technology Act can be utilised for the purpose of providing the depreciation to the computers under the Income-tax Act or not.

In this age of technology, most of gadgets/machines available or functioning in commercial/industrial set up are working with the aid of computers whether CNC

(Computerised Numerical Control), computerised printing machine computerised stitching and designing machine, biometric attendance machine etc., however as held by the special bench one has to see principal purpose of the device like in CNC, is manufacturing machine though working with the aid of computer and using pre-instructions for designing, shaping metal woods etc. It is viewed that CNC cannot be said to be computer as principal purpose of CNC is to design/shape or manufacture. Similarly, computerised embroidery machine also function to make design as per specifications on the cloths without the aid/partial aid of human. Then again, one can only term computerised embroidery machine as designing machine working with the aid of computer not the computer.

Similarly, the predominate purpose of iPad is a communication and not a computing device. as its main features are email, WhatsApp, FaceTime calls, calls, music, films etc., though, iPad may discharge some of the functions of computers. It is viewed that iPad is not a substitution of computer/laptop, which have various utilities/functions, though some functions may be common with iPad. In common parlance also, iPad is considered as communicating device with some additional features of computer and lastly Apple store do not sell iPad as computer device rather it is selling it as communicating and entertainment device.

There is yet another reason for holding that the iPad is a communication device, as it is having IMEI number and though assessee had denied to have IMEI number, in the subject matter of iPad, however no concrete evidence has been produced on record in this regard. Lastly it is also opined that in case the assessee wishes to claim that iPad is a computer and is required to have depreciation at the higher rate, then, onus is on the assessee to prove that the assessee is entitled to higher depreciation and merely on the basis of deduction/assumption it cannot be held that the iPad is computer.

In view of the above, it is opined that iPad is not a computer hence depreciation at low rate is applicable.

2) Issue Involved:

Automatic vacation of a stay of order of Assessing Officer (AO) upon expiry of 365 days even if delay in disposing of appeal by tribunal is not attributable to assessee is unconstitutional as offending article 14 of the constitution of India

- **In the Supreme Court of India, in the case of Pepsi food ltd v. Deputy Commissioner of Income Tax. (6 April, 2021).**

GIST OF CASE

The assesse company was engaged in the business of manufacturing and sale of concentrates, fruit juices, processing of rice and trading of goods for export. It filed its return of income declaring a total income of certain amount. An assessment order was passed which was not acceptable to the assesse.

The assesse filed an appeal before the Tribunal. On 31-5-2013, a stay of operation of the order of AO was granted by the Tribunal for a period of six months. This was extended till 8-1-2014. Since the period of 365 days as provided in section 254(2A) was to end on 30-5-2014 beyond which no further extension could be granted, the assessee, apprehending coercive action from the Income Tax department, filed a writ petition before the High Court challenging the constitutional validity of the third proviso to section 254(2A).

The High Court struck down that part of the third proviso to section 254(2A) which did not permit the extension of a stay order beyond days' even if the assesse was not responsible for delay in hearing the appeal.

HELD:

On the Income Tax Department's appeal to the Supreme Court (SC) held that It is settled law that challenges to six statutes made under article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds maybe procedural or substantive in nature.

There can be no doubt that the third proviso to section 254(2A) introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending article 14 of the Constitution of India. First and foremost, as has correctly been held in the impugned judgment, unequal's are treated equally in that no differentiation is made by the third proviso between the assessee's who are responsible for

delaying the proceedings and assessee's who are not so responsible. This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to section 254(2A), making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. The second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to section 254(2A) in its previous avatar. Ordinarily, the Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned. The object sought to be achieved by the third proviso to section 254(2A) is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary. Since the object of the third proviso to section 254(2A) is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days' even if the Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the revenue would ensue even if the revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

It is already seen how unequal's have been treated equally so far as assesses who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of article 14 of the Constitution of India. Also, the expression 'permissible' policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down.

The present appeals have nothing to do with determining eligibility to tax. They have only to do with a frontal challenge to the constitutional validity of an appeal provision in the Income Tax Act. Also, it is important to remember that the golden rule of interpretation is not given a go-by when it comes to interpretation of tax statutes.

Resultantly, the judgments of the various High Courts which follow the aforesaid declaration of law are also correct. Consequently, the third proviso to section 254(2A) will now be read without the word 'even' and the words 'is not' after the words 'delay in disposing of the appeal'. Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section only if the delay in disposing of the appeal is attributable to the assessee. The appeals of the revenue are, therefore, dismissed.

~Compiled by Ravi Payasee

GST

Notification No. 01/2022-Central Tax, Dated the 24th February, 2022.

This notification is issued by the Central Government in respect of clarification regarding the limit of E-invoice.

The Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020,

Earlier the person whose aggregate turnover in any preceding financial year exceeds fifty crore rupees, as a class of registered person who shall prepare E- invoice and other prescribed documents, in respect of supply of goods or services or both to a registered person.

Now according to the proposed amendment the limit has been changed to twenty crore rupees from 1st April 2022.

~Compiled by Radhika Said

1) RBI/2021-22/155
A.P. (DIR Series) Circular No. 23

Transactions in Credit Default Swap (CDS) by Foreign Portfolio Investors – Operational Instructions

Foreign Portfolio Investors (FPIs) are eligible to be categorised as non-retail users and have been allowed to buy and sell CDS protection under the Credit Derivatives Directions. Necessary Directions to Authorised Persons that are eligible to deal with FPIs for transacting in Credit Derivatives in terms of the Credit Derivatives Directions are being issued hereunder.

Selling of CDS protection by all FPIs shall be subject to a limit specified by the Reserve Bank from time to time (hereinafter, aggregate limit). The aggregate limit of the notional amount of CDS sold by FPIs shall be 5% of the outstanding stock of corporate bonds. Clearing Corporation of India Ltd. (CCIL) shall disseminate the utilisation of aggregate limit based on the reporting by the market makers for transactions in OTC market and reporting by stock exchanges for transactions on exchanges. FPIs shall not sell any CDS protection once aggregate limit is utilised. The limit utilised for CDS protection sold by the FPI shall be released upon the exit of the CDS position by the FPIs.

Debt instruments received by FPIs as deliverable obligation and debt instruments purchased by FPIs for meeting deliverable obligation in physical settlement of CDS contracts shall be reckoned under the investment limits for corporate bonds as specified in A.P. (DIR Series) Circular No. 05 dated May 31, 2021, as amended from time to time. In case of non-availability of investment limit at the time of physical settlement, such debt instruments shall be adjusted against the revised limits in the subsequent review of investment limits.

The notional amount of protection sold by FPIs, and the debt instruments received as deliverable obligation as well as debt instruments purchased for meeting deliverable obligation by FPIs in physical settlement of CDS contracts shall not be subject to minimum residual maturity requirement / short-term limit, concentration limit or single/group investor-wise limits applicable to FPI investment in corporate bonds as specified in paragraphs 4(b), (e) and (f) respectively of A.P. (DIR Series) Circular No. 31 dated June 15, 2018.

The Directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approval, if any, required under any other law.

2) RBI/2021-22/157
FMRD.DIRD.12/14.03.046/2021-22

Rupee Interest Rate Derivatives (Reserve Bank) Directions – Review

Banks in India having Authorised Dealer Category-I (AD Cat-I) license under FEMA, 1999, shall be eligible to offer Foreign Currency Settled Overnight Indexed Swaps OIS (FCS-OIS) based on the Overnight Mumbai Interbank Outright Rate (MIBOR) benchmark published by Financial Benchmarks India Pvt. Ltd. (FBIL) to persons not resident in India as well as to other AD Cat-I banks. Banks can undertake these transactions through their branches in India, through their International Financial Services Centre (IFSC) Banking Units (IBUs) or through their foreign branches (in case of foreign banks operating in India, through any branch of the parent bank). Banks may undertake FCS-OIS transactions beyond onshore market hours.

The instructions shall be applicable with immediate effect.

3) RBI/2021-2022/158
DOR.STR.REC.85/21.04.048/2021-22

Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Clarifications

The definition of 'out of order', as clarified in the Circular, shall be applicable to all loan products being offered as an overdraft facility, including those not meant for business purposes and/or which entail interest repayments as the only credits.

The 'previous 90 days' period' for determination of 'out of order' status of a CC/OD account shall be inclusive of the day for which the day-end process is being run.

In case of borrowers having more than one credit facility from a lending institution, loan accounts shall be upgraded from NPA to standard asset category only upon repayment of entire arrears of interest and principal pertaining to all the credit facilities.

The circular does not make any changes to the requirements related to reporting of information to CRILC, which will continue to be governed in terms of extant instructions for respective entities.

The circular does not, in any way, interfere with the extant guidelines on implementation of Ind-AS by NBFCs.

Loan accounts classified as NPAs may be upgraded as 'standard' asset only if entire arrears of interest and principal are paid by the borrower. NBFCs shall have time till September 30, 2022 to put in place the necessary systems to implement this provision. All other instructions of the Circular shall continue to be applicable as per the timelines specified therein.

4) RBI/2021-2022/159
A.P. (DIR Series) Circular No. 24

Exim Bank's Government of India supported Line of Credit (LoC) of USD 50 million to the Government of the Republic of Maldives

Export-Import Bank of India (Exim Bank) has entered into an agreement dated February 21, 2021 with the Government of the Republic of Maldives, for making available to the latter, Government of India supported Line of Credit (LoC) of USD 50 million (USD Fifty Million only) for the purpose of defence projects. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India, and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

The Agreement under the LoC is effective from February 08, 2022. Under the LoC, the terminal utilization period is 60 months from the scheduled completion date of the project.

Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

~Compiled by Preeti Rajani

CORPORATE LAW

1. CORPORATE SOCIAL RESPONSIBILITY (SECTION 135)

In the Companies (Accounts) Rules, 2014 the following sub-rule shall be inserted on the date of Notification i.e. 11th February, 2022, namely: -

"Every company covered under the provisions of sub-section (1) to Section 135 for whom the CSR provisions are applicable shall furnish a report on Corporate Social Responsibility regarding the CSR Contribution including any Unspent Amount, if any in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be."

2. INTRODUCTION OF UPDATED PORTAL FOR LIMITED LIABILITY PARTNERSHIP FILING

The Ministry of Corporate Affairs has launched the new Portal / Version of e-filing for LLP on MCA21 portal.

Henceforth, all the LLP filings (including Annual Filing, Modification in LLP, Incorporation, Strike Off, etc.) shall be done by web based mode only.

For the purpose of ease of doing business, every LLP is required to create Separate Login ID in its own name for LLP filing.

~ Compiled by Devika Gangapuram

"दुनिया से लड़ कर जीती वो नारी

बेड़िया तोड़ आगे बढ़ी न हारी

कहानियां जिसपर बनी कई सारी

हर अदा जिसकी होती है प्यारी

शादी शुदा हो या हो कवारी

कुछ भी करने की पूरी तैयारी

सदियों से रहा है यह जारी

घर की यह है जान हमारी

ऐसी ही है इस देश की नारी

जिसने सब पर अपनी जान वारी

~Ashutosh Sahu

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