



THE CHAMBER OF TAX CONSULTANTS

41st Residential Refresher Course

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Hotel Taj Swarna, Amritsar

Selected Case Studies Under Mock Tribunal Approach

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Case Study No. 1

In the case of Kalakaar Constructions Pvt. Ltd., its assessment for AY 2007-08 was reopened and reassessment was done u/s. 147 wherein queries were raised by the AO with regard to receipt of share capital of ₹ 80 lakh. The assessee provided names and addresses of the shareholders. The AO raised further queries to justify the share capital e.g., PAN Copy of income tax return of the shareholders, source details, confirmation and other documentary evidences to justify and substantiate the receipt of share capital. Various dates were fixed by the AO giving opportunity to the said assessee for providing the aforesaid evidences/documents. However, assessee could not place further documents. Consequently, the aforesaid amount of share capital was treated as unexplained and added to the income of assessee as income from undisclosed sources u/s. 68 of the Income-tax Act, 1961. Another disallowance was also made out of commission expenses for ₹ 20 lakh. Thus, aggregate addition was made of ₹ one crore.

In the appeal before CIT(A), the assessee challenged the additions/disallowances on merits and also raised grounds challenging the reopening of the assessment u/s. 147 of the Act. Before the CIT(A), assessee brought on record various evidences and made request for their admission under Rule 46A. The CIT(A) sent all these evidences to the AO for remand report. The AO in its remand report objected to the admission of the additional evidences on the ground that case of the assessee does not fall in any of the clauses of Rule 46A of the Income Tax Rules, 1962. But, finally, the CIT(A) was satisfied with the submissions and evidences of the assessee, therefore he fully deleted the addition with respect to share capital. The disallowance of commission was reduced to ₹ 50 thousand only.

However, learned CIT(A) decided the issue on merits only and did not adjudicate the grounds on reopening. The revenue filed the appeal before the Tribunal but no further agitation was done by the assessee.

The revenue has filed appeal before the ITAT raising following grounds:

“On the facts and in the circumstances of the case, learned CIT(A) has erred in deleting the addition of ₹ 80 lakh u/s. 68 of the Income-tax Act, 1961 being the unexplained credit and further erred in reducing the disallowing of commission expenses to ₹ 50,000/-.”

On the first date of hearing before the Tribunal, representation was made in-house by the aforesaid company through its Director (Taxation) namely Mr. K. Majumdar.

During the course of hearing, the Senior Departmental Representative on behalf of the revenue pointed out various fallacies in the documentary evidences submitted by the assessee and according to him assessee was not able to discharge its burden u/s. 68 of the Income-tax Act, 1961. However, the Hon'ble Bench was primarily interested in examining the action of the CIT (A) in admitting additional evidences under Rule 46A.

Further, it transpired that the case of the assessee is found to be weak in view of the insufficient evidences placed before the Bench to substantiate the amount of Share Capital added by the AO. Thus, you felt like challenging the reopening, however Bench did not allow you to do so in absence of any appeal/cross-appeal/cross-objection filed by the assessee.

In this process, Mr. Majumdar got puzzled as he was not ready for such queries as no such ground was raised by the revenue. However, somehow the case got adjourned due to the paucity of time.

Now, in view of these developments and to avoid any risk of ineffective representation, Mr. Majumdar has approached you as a seasoned counsel known for representing complex matters before the Hon'ble ITAT.

Under these circumstances, on the next date of hearing, what are the options available before you to save this case from unjustified disposal and to render justice to this case?

Thus, in view of the aforesaid background you have been asked to chalk out your course of action *inter alia* following issues:

- i.) Whether any cross-objection or petition under Rule 27 is required to be filed? If yes, please give your suggestions for drafting of suitable grounds for cross-objection and petition under Rule 27 of the ITAT Rules.
- ii.) Whether under the law, the Tribunal can raise an issue or decide a ground which has not been raised by either of the party before the Tribunal?
 - a) If no, then articulate the arguments in your defence to stop the Tribunal from raising the issue of admissibility of additional evidences by the CIT(A).

- b) If yes, then suggest your line of defence to meet the query of the Bench that so many opportunities were given by the AO but still assessee did not submit the evidences and therefore, assessee's case does not fall in any of the situation envisaged in Rule 46A and thus admission and consideration of evidences by the CIT(A) was contrary to law and facts of the case.
- iii) Whether you would like to compile a paper book to support your case on merits and if yes, please suggest what kind of documents you would like to attach therein. Mr. Majumdar is of the opinion that he has been advised that since it is revenue's appeal, no paper book is required to be filed by the assessee and the onus is upon the revenue to dislodge the findings of the CIT(A).
- iv) What difference would be made in your preparations if the case pertains to AY 2013-14 or any subsequent year?

Case Study No. 2

In the case of Mahalaxmi Wealth Management Ltd., original assessment was done for AY 2005-06 u/s. 143(3) of the Income-tax Act, 1961 wherein detailed examination was done of share capital and unsecured loans received by the said company and no addition was made in the order passed u/s. 143(3). Subsequently, notice u/s. 148 is received by Mr. Dhankar, Manager (Finance) of the said company on 15th March, 2010. In response to which copy of income tax return is filed by the said company and then AO provided the copy of the 'Reasons' recorded by him for reopening of the case. Though, general objections are raised by Mr. Dhankar about reopening but these were dismissed by the AO. In his show cause notice, AO relied upon statement recorded by the Investigation Wing, Delhi of Mr. Mahesh Garg wherein he stated that amount provided by his companies to the assessee were accommodation entries. Assessee asked for copy of statement of Mr. Garg along with opportunity of his cross-examination, but AO paid no heed to the request of the assessee and finally share capital received by the company was added as unexplained. Before the CIT(A) also, though challenge was made on reopening as well as merits but assessee gets no relief.

Being highly disturbed with the huge tax demand, the management of the said company, engaged the services of your office. When you examined the file, following relevant facts were revealed:

- i) The reason recorded by AO reads as under:

"During the course of search and seizure operations in case of Shri SK Jain Group, it has been found that the group companies are providing accommodation entries to various persons. The following accommodation entries are received by the assessee company:

Date	Entry Providing Company	Bank	Cheque No.	Amount (₹)
8-5-2006	Zenith Automobiles Pvt. Ltd.	Axis Bank	098144	5 lakh
7-6-2006	Mega Top Promoters Pvt. Ltd	Axis Bank	120118	10 lakh

The report given by the D.I. (Inv.)-II dated 12-12-2009 was perused and after examination of the reports, I have reasons to believe that income has escaped assessment.

Thus, proposal is sent to the Commissioner of Income Tax-I, Mumbai to grant approval for reopening the case u/s. 148 and framing the reassessment order. Accordingly notice has been issued u/s. 148.

-Sd-

Y. N. Meena
ITO, Ward 1(1)
Mumbai

Approved

Date : 16-3-2010

Commissioner of Income tax-I, Mumbai

On further enquiry, it is noted by you that in this case re-assessment order has been finally framed by the ACIT, Circle-2(2), Mumbai. On inspection of file it was noted that file was transferred by the ITO Ward-1(1) to ACIT, Circle-2(2) on the ground that jurisdiction of this case lies with the latter. On further perusal of the reassessment order, it was also revealed that no addition was made in the order of the amounts recorded in the Reasons since they pertain to other years.

Mr. Dhankar has requested you to opine on the arguments to be raised at the time of hearing for its vetting by the management and has strongly suggested that in this case detailed examination was done in the original assessment proceedings and thus there was full disclosure on the part of the assessee and thus there was no failure in disclosure of material facts by the assessee and thus the reopening is barred by the limitation.

Thus, you are required to give your opinion for drafting of comprehensive gist of arguments to cover various facets of reopening u/s. 147.

While making your arguments you have also to keep in mind and appropriately deal with the embargo imposed by section 124 of the Income-tax Act, 1961 with the help of relevant case laws.

Case Study No.3

- (a) Mr. Raju Patel owned big chunk of agricultural land in Karjat. On 10th April 2016, he sold aforesaid land and with a view to avoid the incidence of capital gain, he purchased on 20th November, 2016 other land in the vicinity for being used for agricultural purposes to avail the benefit of deduction u/s. 54B. However, he purchased new land in name of his daughter-in-law.

During the course of assessment proceeding for AY 2017-18, the AO has given him a show cause notice as to why the benefit of deduction u/s. 54B should not be denied to him as the land has not been purchased by him in his own name. Mr. Patel's Accountant is of the opinion that since the land is used by Mr. Patel for his own benefit and the agricultural operations are carried out by him or in his supervision, however it was acquired in the name of his daughter -in-law as a measure of social security and due to family exigencies, but land belongs to Mr. Patel and he remains his de facto/real owner, therefore he should get the benefit of deduction u/s. 54B. However, he wants to consult a wiser consultant like you and you have been approached to advise him which should protect him under the Income Tax Law or any other law which may put him under unknown trouble. Reference may be made to Prevention of Money Laundering Act, Black Money Act and Prohibition of Benami Property and Transactions Act, 1988.

- (b) During the course of search at premises of Mr. Dinesh Karvat, such a situation emerged that he is compelled to make some voluntary disclosure before the search team. One official from the search team suggested that Mr. Karvat had raised unsecured loan amounting to ₹ 25 crore by cheque and Mr. Karvat can declare the said loan to be bogus as part of the disclosure and can pay tax thereon.

Mr. Karvat has been allowed to speak to you on telephone, and therefore, he has called you to help him to visualise the total exposure he might take under the Income Tax Law, Prevention of Money Laundering Act, new Benami Law and Black Money Act, if he declares the aforesaid amount of loan as bogus or an accommodation entry.

Case Study No. 4: Issues with regard to Penalty u/s. 271(1)(c)

- (a) Ms. Priyanka Misra, held a very senior position in M/s. Thomas King Travels Ltd., which is a leading Multi-National Travel Company and her posting was in Mumbai. She was allotted shares under ESOP schemes by her employer which was sold by her during FY 2015-16. Her case was selected for scrutiny for AY 2016-17 and assessment order was framed u/s. 143(3) wherein no addition was made on account of profit/gain arising to her on sale of ESOP shares. Her argument was that since the date of exercise of option and date of sale was same, therefore, no amount of capital gain was taxable in view of judgment of Mumbai Bench of Tribunal in the case of *Bomi S. Billimoria vs. ACIT 124 TTJ 960 (Mumbai)*. Similarly, reliance was also placed on the judgment of Supreme Court in the case of *B. C. Srinivas Setty 128 ITR 294 (SC)*. Reliance was placed on few other judgments and finally AO accepted her contention and nothing was brought to tax in this regard.

Subsequently, the Commissioner of Income Tax issued notice u/s. 263 on the ground that order passed by AO is erroneous and prejudicial to the interest of revenue. He set aside the original assessment order and directed that entire

amount of surplus on sale of shares allotted to the assessee under ESOP of ₹ 90 lakh was taxable as short term Capital gain. Thereafter, AO passed order u/s. 143(3) r.w.s section 263 of the Income Tax Act, 1961 to give effect to the order of Commissioner of Income-tax and included the above said amount in the income of the assessee. Assessee did not file any appeal against any of the above said orders.

Later on, AO issued notice u/s. 271(1)(c) for levying the penalty and being dissatisfied with the reply of assessee, he levied a penalty of ₹ 33 lakh on aforesaid amount of short term capital gain added by the AO. Assessee filed appeal to CIT(A) wherein it was contested that penalty is not leviable on such type of additions/disallowances. However, CIT(A) was not satisfied with the submissions of assessee and therefore, he confirmed the addition.

Ms. Misra has been informed by a well-wisher that levy of penalty may lead to prosecution and this information has put her to distress. She had approached your good office for filing of appeal and its representation before the ITAT. In view of the above background, you are required to do the following:

- i) Give your suggestions for drafting the grounds of appeal to be filed against the order passed by CIT(A) confirming the levying of penalty u/s. 271(1)(c).
 - ii) Articulate your arguments to challenge levy of penalty from all possible corners including validity of the genesis order passed u/s. 263.
 - iii) To decide any other course of action, if possible for ex-filing of appeal against order passed u/s. 263 and/or order passed u/s. 263 r.w.s. 143(3).
- (b) Case of M/s. Thomas King Travels Ltd was reopened and during course of reassessment proceedings various queries were raised by the AO for substantiating the amount of unsecured loan received during the year and justifying the expenses of commission, foreign travels, business promotion, consultancy charges and salary expenses debited in the P & L Account. The assessee asked for 'Reasons' for reopening but the same was not provided and the AO went ahead with the assessment and in absence of proper documentary evidences he made total disallowance of all aforesaid expenses and also added the amount of unsecured loans u/s. 68 of the Income-tax Act, 1961. There were huge losses in the company, therefore nil demand was raised and thus no appeal was filed by the management of company.

Subsequently, penalty proceedings were initiated by AO. During the course of penalty proceedings, it also transpired that notice u/s. 148 was issued and served beyond the period of 6 years but no objection was raised in this regard during course of assessment proceedings. (Thus, compliance with provisions of section 292BB remained pending).

Now, the management has become wiser and is apprehensive that huge demand may be raised as a result of levy of penalty if representation is not done properly. Under these circumstances, you have been called upon to devise a proper course of action so that proper representation is made during the course of penalty proceedings in such a manner that even if penalty is levied at this stage the same can be properly contested before the ITAT. Please also suggest the broad description of documentary evidences that should be filed to save this case from levy of penalty.

Case Study No. 5

M/s. Subodh Shah HUF was owner of 1 lakh equity shares of a private limited company since last many years. During the Financial Year 2012-13, Mrs. Sneha Shah (mother of Mr. Subodh Shah, Karta) gifted 75,000 equity shares of the same company to M/s. Subodh Shah HUF. The relevant clause, of the gift deed reads as under:

“That out of natural love and affection which I bear towards the family of my son namely Shri Subodh Shah, his wife Sonal Shah and 3 children namely Reena Shah, Leena Shah and Ravi Shah R/o Malabar Hill Mumbai, jointly forming Subodh Shah HUF, I make a gift of 75,000 equity shares of XYZ Pvt. Ltd. having office at Dalamal Tower, Nariman Point, Mumbai of ₹ 10 each bearing distinctive Nos. in favour of M/s. Subodh Shah HUF on 14-9-2012.”

Thereafter, all these shares were sold by the said HUF and capital gain arising thereon was disclosed in its return. The return was selected for scrutiny and during the course of assessment proceeding, the AO examined the cost of acquisition and amount of sale consideration and accepted the amount of gain shown by the assessee. Subsequently, Commissioner of Income Tax issued notice u/s. 263 and set aside the order of the AO on the ground that AO failed to invoke the plain provisions of section 56(2)(vii)(e) read with definition of the term relative, therefore, it also becomes mistake of law and directed him to reframe the assessment order keeping in view the fact that this gift did not fall within the ambit of gift from ‘relative’ and therefore will not enjoy the benefit of exclusion clause and thus will be liable to be taxed u/s. 56(2)(vii). Further, it was held by the Commissioner of Income Tax that for quantification of the amount to be taxed, the valuation of shares will be done u/s. 2(22B) of the Income-tax Act, 1961, which defines the expression ‘Fair Market Value’ instead of Fair Market Value under Rule 11U.

You have been approached to represent this appeal before the Tribunal and therefore you are required to address inter alia following issues:

- i) Whether assumption of jurisdiction u/s. 263 is valid in the given facts and circumstances of the case. The Manager(Taxation) of the assessee is of the strong opinion that all the documentary evidences about acquisition of shares and sale of shares were placed before AO and gift deed was also placed before AO, therefore jurisdiction of CIT u/s. 263 cannot be invoked, and since a view has already been taken by the AO.

- ii) Whether the shares received by way of gift by assessee would be liable to be taxed u/s. 56(2)(vii) of the Act or the transaction may fall under any of the exclusion clauses.
- iii) Whether the action of Commissioner of Income Tax in adopting Fair Market Value in terms of section 2(22B) is in accordance with law.

Case Study No. 6

Mr. P. M. Rungta was member of a large family. The family was holding various properties including one flat at Bandra West which was occupied and enjoyed by Mr. Rungta and his children since 1976. During March 2010, an arrangement took place in his family and the above said flat fell into the share of Mr. Rungta. He sold the same in April 2011 and disclosed the amount of capital gain arising thereon as Long-Term Capital Gain whereas AO treated the same as short term capital asset and resultant gain as Short-Term Capital Gain. The dispute arose on determination of cost of acquisition also.

Please give your suggestions for drafting the arguments before the Tribunal for representing Mr. Rungta.

Case Studies only for Discussion and Presentation

Case Study No. A

During AY 2007-08, M/s. North Point Pvt. Ltd. had received share capital for ₹ 10 crore. In July, 2007 the company got amalgamated into another company namely M/s. North Life Development Company Ltd. Thereafter, the return of M/s. North Point Pvt. Ltd. was selected for scrutiny and assessment order was passed in March 2009 upon M/s North Point Pvt Ltd. wherein the entire amount of share capital was found to be duly substantiated and no addition was made. Subsequently, Commissioner of Income Tax called for records of AO and found that the AO has not carried out requisite examination with regard to the share capital and assessment order passed is erroneous and prejudicial to the interest of revenue and he set aside the assessment order and directed the AO to carry out fresh examination of the share capital and to make *de novo* assessment.

You have been approached to suggest and file an appeal before the Tribunal. You have to draft the grounds and brief synopsis of the appeal to challenge the order u/s. 263.

Case Study No. B

One fine morning of November 2016, Mr. Vikram Seth during his retired life, enjoying morning tea with his wife in his lawn gets a visitor from Income Tax department who happens to be an Inspector from Income Tax department and he slaps him with notice showing arrears of demand of ₹ 36 crore payable by Mr. Seth to Income Tax department. Somehow, after recovering from the shock, he approaches the concerned officer of the department, where he learns that the demand pertains to M/. Prakash Plantation Ltd., and since the said company had not paid the demand, the same has been transferred to Mr. Seth u/s. 179 of the Income-tax Act, 1961 as Mr. Seth happened to be Ex-Director of the said company. He is informed that the demand pertains to AY 2006-07 which arose in pursuance to the order passed u/s. 263 for the aforesaid company for AY 2006-07. It was also informed that no appeal has been filed by the said company and therefore the demand has been confirmed.

On recapitulation of the facts, Mr. Seth recalls that he was the director of company during said period and subsequently he resigned from the post of director and thereafter, he had no contact with company. On further enquiry, he came to know that operations of the company have been closed and other directors were also not traceable. However, luckily the earlier accountant was still in his touch who still kept the records of the company intact.

Mr. Seth has approached you for suggesting the effective remedies available to him and taking suitable course of action.

How would you help Mr. Seth and how would you handle his case before the ITAT and/or any other forum?