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Tax Digest

- **Recent case laws**

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NEWS FEED

Govt. notifies 'Mahila Samman Savings Certificate, 2023'; offers 7.5% p.a. interest on 2 years deposit

Direct Tax Updates

1. Section 54F:

Proviso to section 54F(1) which contains condition that deduction is not available if assessee owns more than one residential house, other than new asset, should be interpreted to mean ownership of residential houses in India and, therefore, deduction under section 54F could not be denied solely on ground that assessee jointly owned two residential houses in USA.

In the instant case[1], assessee, a non-resident, filed its return of income for the relevant assessment year. During the relevant assessment year, the assessee sold land she jointly held with her husband. He made an investment in a residential property for claiming exemption under section 54F. During the scrutiny proceedings, the Assessing Officer (AO) disallowed claim for deduction under section 54F based on the fact that assessee owned two residential houses in USA.

On appeal, the CIT(A) affirmed the deletions by AO. Aggrieved by the order, assessee preferred an instant appeal to the Cochin Tribunal.

The Tribunal held that the exemption under section 54F is available with respect to a residential house property provided the assessee does not own more than one residential house other than the new asset but does not explicitly say whether in India or abroad. The Finance (No. 2) Act, 2014 amended the section 54F to bring in clarity that the deduction is allowable only if the investment in the new residential house is made in India and not abroad.

Section 54F to the assessee is a benefit which is granted towards making an investment, whereas what is contained in the proviso is a condition/restriction towards existing ownership of the asset and, therefore, it cannot be categorically said that the same interpretation should be applied to both.

It is important that a proviso must be construed harmoniously with the main statute to give effect to the legislative objective, and the section should be read as a whole inclusive of the proviso in such a manner that they mutually throw light on each other and result in a harmonious construction. The legislative intent behind granting relief to the assessee through section 54F is investments in a residential house in India. Therefore, the proviso imposing the conditions cannot be read in isolation and should be construed harmoniously with the main section.

Accordingly, the condition that the deduction is not available if the assessee owns more than one residential house other than the new asset should be interpreted to mean ownership of residential houses in India. Therefore, the ground on which the deduction under section 54F was denied that the assessee owns two residential houses in the USA was not tenable.

2. Section 271D:

Where penalty under section 271D was levied upon assessee for alleged violation of section 269SS for having received certain amount from his wife in cash but it was found that assessee had not received any amount in cash from his wife and instead he received sale consideration for a shop owned by his wife and ultimately returned said amount to his wife in cash, penalty as levied was unsustainable in law.

[1] **Smt. Maries Joseph vs. Deputy Commissioner of Income-tax, International Taxation, Kochi (ITAT COCHIN BENCH) [2023]**

In the instant case[2], Assessee, an individual, was show-caused for levy of penalty for violation of Section 269SS for receiving around Rs. 15 Lakhs in cash from his wife. In response, the assessee replied that his wife sold a property during the relevant assessment year, and the buyer deposited the purchase consideration in his account. This money was then returned to her by the assessee as the same belonged to her.

Further, the assessee demonstrated that he and his wife maintained books of accounts and that the corresponding debit and credit transactions in the books of accounts were not in relation to any loan or deposit of money. However, contending it as a violation of Section 269SS, the Assessing Officer (AO) levied a penalty under section 271D.

On appeal, CIT(A) cancelled the penalty order, and the matter then reached the Jabalpur Tribunal.

The Tribunal held that the entire payment was only in satisfaction of the amount standing to the credit of the assessee's wife, who was only receiving back her money from the assessee. It may attract penalty under section 271E for contravention of section 269T, but there was no question of contravention of section 269SS.

The penalty levied under section 271D was unsustainable in law due to the absence of jurisdictional fact i.e., the acceptance of money in cash by the assessee from his wife. The ledger accounts of the assessee and his wife reveal that the assessee had paid that amount in cash to his wife, and, further, it was the only cash transaction between the two.

Incorrectly mentioning a section of law does not necessarily invalidate the judicial action if the authority has the power to take such action. However, if the incorrect section was mentioned and the underlying facts do not support the intended action, then the action is invalid.

For instance, if an assessee received cash from their spouse, which should attract a penalty under section 271D, but the authority mentioned section 271E incorrectly, the action would still be valid as long as the facts support the intended action.

Accordingly, the penalty under section 271D cannot be imposed without the proper jurisdiction. However, the AO was at liberty to initiate penalty under section 271E.

3. Section 32:

Where assessee's claim of depreciation under section 32 was disallowed on ground that assessee had not used its fixed assets for any part of accounting year, since assessee had not completely abandoned business and had maintained its business establishment and its assets were kept ready for use and it was also generating other types of income, impugned disallowance of assessee's claim of depreciation was unjustified.

In the instant case[3], Assessee-company engaged in the business of generation and sale of electricity. While filing the return of income, assessee claimed depreciation on the business assets. During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had not carried out any business activity in the relevant assessment year.

[2] **Income-tax Officer vs. Sudhir Kumar Rawat (ITAT JABALPUR BENCH) [2023]**

[3] **Sambhav Energy Ltd. Vs. ACIT (ITAT JODHPUR BENCH) [2023]**

In response, assessee submitted that it had stopped business activity since the production became unviable as the sale price was less than its manufacturing cost. Considering that the assessee had no intention to carry on the business activity, AO disallowed the depreciation claim and made additions to the income of assessee.

On appeal, the CIT(A) confirmed the additions made by the AO, and the matter reached Jodhpur Tribunal.

The Tribunal held that the assessee had not completely stopped the business as presumed by the tax authorities. Though the AO stated that the assessee did not start business activities in the subsequent years also, it was not shown that the electricity generation business was completely abandoned.

In the instant case, the assessee kept the assets ready for use, and it was expecting only a favourable market situation. Assessee may revive its business when the market position turns favourable. Further, the business establishment was properly maintained, and it was generating other types of income. Therefore, the additions made by the AO were deleted.

4. Section 10(23C)(vi):

Commissioner (Exemption) is not vested with any power to condone delay involved in filing application for grant of approval under section 10(23C)(vi).

In the instant case[4], Assessee, a society established to impart education, applied belatedly to the Commissioner of Income-Tax (Exemption) for grant of approval under Sec. 10(23C)(vi). CIT(E) rejected the application on the ground that assessee filed the such application after the prescribed time limit. Pursuant to such rejection, the assessee was unable to apply for approval under section 10(23C)(vi) for the subsequent years.

Aggrieved by the order, assessee preferred an appeal to the Raipur Tribunal and requested that the delay in filing the application to be condoned. Assessee also requested that application for Sec. 10(23C) exemption shall be considered as an application for the next assessment year 2019-20 and onwards.

The Tribunal held that the request of the assessee that the delay involved in filing the application for approval be condoned, the same could not be accepted in accordance with the mandate of law.

The assessee filed the application for approval under section 10(23C)(vi) on 25-4-2019 for the assessment year 2018-19; it was required to be filed by 30-9-2018 as per the sixteenth proviso to section 10(23C). The Commissioner had no authority under the Act to pardon the delay in filing the application.

Since the Commissioner was not vested with any power to condone the delay involved in filing the application, he had rightly rejected the application.

Further, the assessee's application for approval under section 10(23C)(vi) for the assessment year 2018-19 was pending until 30-9-2020, which meant they couldn't apply for the subsequent assessment year 2019-20. The matter was remanded to the Commissioner with directions to consider the same application for the subsequent assessment year 2019-20 and beyond.

[4] **Manav Rachana Education Society vs. Commissioner of Income-tax (Exemptions) (ITAT RAIPUR BENCH) [2023]**