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## Tax Digest

- Recent case laws

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**NEWS**

**FEED**

- *The initiation of the reassessment proceedings under the new mechanism- Jurisprudence, yet is to be developed*
- *No Sec. 69A additions towards gold seized from Courier Co. if assessee duly purchased it through banking channels: HC*
- *Illness of managing trustee can be considered as reasonable cause for non-levy of penalty for non-filing of ITR: ITAT*

### 1. Section 147/148: “Reopening”:

**Deposits in joint bank account of the assessee and his wife towards money received from trading operations of his wife cannot be treated as “undisclosed income” where there has been regular inflow and outflow of money in the account which credences trade activities**

In the instant case<sup>1</sup>, the assessee filed his return of income declaring a total income of Rs. 1,60,000/- and gross receipts of Rs. 12,65,390/-. Subsequently, the case was reopened u/s 147/148 of the Act and the AO got information that the assessee held a joint bank account along with his wife, and a sum of Rs. 27,68,700/- was received from the account as cash deposits during the year.

When asked about the same, he submitted that the deposits were from his wife’s business, i.e. sale of seasonal vegetables, who in fact was regularly filing returns. The assessee also submitted the financials (Balance Sheet and P&L) of his wife to prove his contention.

The AO, not satisfied about the existence of his wife’s business, also owing to the fact that there was no trade licence for the same, made an addition of Rs. 13,97,640/-.

Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was of the view that there existed no evidence to substantiate his wife’s business. The Ld CIT(A) proceeded to make an addition equal to the entire amount of the cash deposits, i.e. Rs. 27,68,700/-.

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<sup>1</sup> **Shri Ashim Kumar Mahanta Vs Income Tax Officer, Hoogly (ITAT Kolkata) [2022]**

The assessee preferred an appeal before the Hon’ble Tribunal wherein it was observed that there were regular deposits and simultaneous withdrawals from the account. There was no lump sum deposit of the said Rs. Rs. 27,68,700/-. Hence, the entire amount could not be treated as undisclosed income. The regular inflow and outflow of money gave credence to the trading operations of his wife. For the ends of justice, the Hon;ble Tribunal held 8% of Rs. 27,68,700/-, ie. Rs. 2,21,496/- to be added to the income of the assessee and the balance to be deleted.

Thus the appeal of the assessee was partly allowed.

### 2. Section 143(3): “Scrutiny Assessment”:

**Gains from sale of shares cannot be taxed as business income when the same has been held as investments and shown accordingly in the financials of the assessee**

In the instant case<sup>2</sup>, the AO made an addition to the total income of the assessee treating the gains from purchase and sale of shares as business income instead of short term capital gain as disclosed by the assessee in its return of income. The said addition was also confirmed by the Ld. CIT(A) later on.

Aggrieved the assessee filed an appeal before the Tribunal wherein it submitted that it was not in the business of purchase and sale of shares and had not taken major loans for making investment in the equity shares. All the dealings in shares were on delivery basis. In support of its contention, the assessee had presented Statement of Profit & Loss and Balance Sheet for the preceding two assessment

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<sup>2</sup> **Sheetal Mohta Vs Assistant Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]**

years which clearly evidenced the contentions made by it.

The Hon'ble Tribunal relied on the decision of the Calcutta High Court in the case of Commissioner of Income-tax, Kolkata-III Vs Merlin Holding (P.) Ltd. [2015] 375 ITR 118 (Calcutta) and held that the investment made by the assessee in the equity shares for purchase were not from borrowed funds and were majorly from the assessee's own capital. Further, the assessee had held the shares after delivery to it and sold after a period of 5 to 115 days on an average. Thereafter, the assessee had consistently been showing income from long term capital gain and short term capital gain from sale of shares in the past and in subsequent years which was not disputed by the Revenue.

Therefore, the Tribunal set aside the order of the Id. CIT(A) and held that the said addition should be taxed as a short term capital gain and not as a business income. Thus, the appeal of the assessee was allowed.

### **3. Section-263 "Revision of Assessment":**

In the instant case<sup>3</sup>, the AO made an addition to the total income of the assessee on account of bogus purchases shown by the assessee in its books of accounts which was further confirmed by the Id.CIT(A) also. Notice u/s-263 was issued to assessee in response of which, it had presented its audited financial statements as well as tax audit report.

Aggrieved the assessee went for an appeal before the Tribunal wherein the assessee submitted its

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<sup>3</sup> **M/s Diach Chemicals & Pigments Pvt. Ltd Vs Assistant Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]**

books of accounts which had not been rejected earlier. The assessee also furnished details of trade payable and copies of the VAT returns and details of excise duty paid. It contended that it had produced evidences of the sales made by the assessee, which could not have been possible without the purchases of the raw material and thereafter manufacturing of the goods. The assessee further submitted that it had duly maintained stock register, day to day register showing the ingress and egress of the products and that the same had not been disputed either by the AO nor by the PCIT.

The assessee, therefore, contended that the Id. PCIT has erred in exercising his jurisdiction u/s 263 of the Act in response of which, Ld. DR submitted that enquiries were made by the Department before issuing the notice u/s 263 of the Act to the assessee, from which it had been found that the alleged seller of the raw material did not exist at the given address, therefore, it was apparent that the purchases were not made by the assessee from the said parties. The Id. DR, therefore, had submitted that the Id. PCIT had rightly exercised his jurisdiction u/s 263 of the Act and that the bogus purchases were required to be added.

Though, the present appeal was against the order passed by the Id. PCIT u/s 263 of the Act, however, the Tribunal was of the view that the dispute could be resolved after considering the aforesaid submissions of both the parties, which not only would save the parties of harassment of facing another round of litigation but also could avoid multiplicity of litigation.

Considering the facts and circumstances of the case, as suggested by both the parties and since the assessee had also agreed that the net profit rate of the assessee might reasonably be enhanced so as to prevent the assessee for another round of

litigation and for the purpose of finality of the proceedings, which also had not been objected by the Id. DR, the Tribunal directed the AO to assess the net profit rate of the assessee @2% of the alleged bogus purchases. The order of Id. PCIT was modified accordingly and the directions given by the Id. PCIT for a fresh assessment were set aside.

#### **4. Section-143(3):**

##### **Sales Tax Subsidy received from Government is a non-taxable capital receipt in the hands of recipient.**

In the instant case<sup>4</sup>, the assessee had received sales tax subsidy from the State Government (West Bengal Government). The assessee had offered the same for taxation in the return of income and the assessment was accordingly framed by the AO u/s 143(3) of the Income Tax Act. Subsequently, the assessee realized that the said amount offered by the assessee as income did not fall in the category of taxable income of the assessee, rather, the same, as settled by the various High Courts as well as by the Hon'ble Apex Court of the country, was non-taxable capital receipt.

Thereafter, the assessee filed an application u/s 154 of the Act for rectification and pleaded that the amount of subsidy was wrongly offered for taxation under a mistaken belief and the same did not constitute taxable income of the assessee. It was, therefore, requested that a rectification order may be passed and the aforesaid sales tax subsidy should be excluded from the taxable income of the assessee. However, the AO dismissed the aforesaid application of the assessee.

Being aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) which also dismissed the appeal of the assessee.

Aggrieved the assessee went for an appeal before the Tribunal which by relying upon the of Hon'ble Supreme Court in the case of Balaji Alloys vs CIT [2017] (SC) dated 19.04.2016 and the decision of the Jurisdictional Calcutta High Court in the case of CIT vs Rasoi Limited [2011] (Cal) (HC) dated 19.05.2011, held that sales tax subsidy received by the assessee from the Govt. of West Bengal under a scheme of industrial promotion would be considered as a capital receipt and the taxation of a capital receipt which did not constitute income of the assessee would constitute a mistake apparent on record. Moreover, in terms of the Article 265 of the Constitution, tax can be levied only if it is authorized by law. The taxing authority cannot collect or retain tax that is not authorized. Any retention of tax collected, which is not otherwise payable, would be illegal and unconstitutional.

In view of the above discussion and in the light of Article 265 of the Constitution of India and in the light of decision of the Hon'ble Supreme Court and other High Courts of the country, the lower authorities failed to exercise jurisdiction vested in them under the jurisdiction of section 154 of the Act.

Therefore, the hon'ble Tribunal allowed the appeal and directed the AO to exclude the income from sales tax subsidy received from Govt. of West Bengal which has been inadvertently offered by the assessee for taxation and grant the appropriate relief/refund of the assessee. In the result, the appeal of the assessee was allowed.

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<sup>4</sup> **Shri Ritum Jain Vs Deputy Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]**