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Tax Digest

- Recent case laws

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NEWS

FEED

- *E-filing of ITR 1 and ITR 4 for AY 2022-23 enabled (offline & online both). Taxpayers can download ITR Offline Utility through “Downloads” Menu option on the income tax website, and fill and file the ITR through the same.*

1. Trade association leasing plots to members on basis of their contributions is eligible for section 12A registration: ITAT

Where assessee-society was engaged in promotion of trade and commerce related to pharma business and protecting rights and interests of its members, case of assessee got covered in fourth limb of section 2(15), i.e. 'advancement of any other object of general public utility', and it would be entitled to registration under section 12A

In the instant case¹, the assessee was a trade association meant for promoting the business of pharma dealers and protecting the rights and interest of its members who were engaged in pharma business. The assessee claimed to be engaged in charitable activities falling within the ambit of expression 'the advancement of any other object of general public utility' as contained under section 2(15) and based on that premise filed application seeking registration of the society under section 12AA.

The Commissioner (Exemption) rejected application on the ground that activities undertaken by the assessee did not fall within the definition of section 2(15). He also observed that (i) the assessee was a mutual concern operating on the principles of mutuality and as such, the benefit was not meant for public at large; (ii) that the assessee-society purchased the land out of the contributions made

by the members, however, in reciprocation of the contribution, the assessee gave the land after development of market and development of plots to its members, and, consequently, the land was not appearing in the balance sheet; and (iii) contribution from the members was just like donation and the members had derived the benefit from donation by way of land/developed plots leased out to the members.

Aggrieved, the assessee preferred an appeal before the Tribunal where it was observed that the essence of decision is that the provisions contained under section 12A nowhere empowers the Commissioner (Exemption) to assess the objects vis-a-vis the books of account. Even otherwise, it is not to be seen at the stage of application as to whether the fulfilment of the charitable trust would eventually benefit the members of the society. Some possible benefits to the members would not effect the genuineness of the objects of the trust *per se*. Also, the land had been disclosed under the head "Land and Land Development" appropriately in its balance sheet, and the same does not render the trust ineligible for registration *per se*. On perusal of the objects of the assessee-society one cannot say that the objects are not charitable in nature. The Hon'ble Tribunal held that it is not necessary that object of general public utility should be beneficial to the whole mankind. The object beneficial to a section of the public is also an object of general public utility. Hence, the case of the assessee gets covered in the fourth limb of section 2(15) 'the advancement of any other object of general public utility'. This being so, the assessee would be entitled to the benefit meant for charitable trust as contemplated in the scheme of the Act.

¹ **Confederation of Pharma Dealers Association V. Commissioner of Income-tax (Exemption) (ITAT Raipur) [2022]**

2. Rule 11U doesn't mandate that Balance Sheet should be audited on date of valuation of shares: ITAT

Where balance sheet was not drawn up on date of valuation, for arriving at FMV of shares, however, there was no difference in financials of tentative balance sheet after audit by auditors, balance sheet audited subsequently would be sufficient compliance of provisions of rule 11U(b)

In the instant case², the assessee is a private limited company. During the period relevant to assessment year under appeal, the assessee had allotted 31950 shares of Rs. 10/- each at premium of Rs. 10/- i.e. aggregating to Rs. 20/- per share to the family members and related group companies on 31-3-2016. In scrutiny assessment proceedings, the Assessing Officer (AO) issued show cause as to why Fair Market Value (FMV) of shares at Rs. 17.32 per share based on audited Balance Sheet as on 31/3/2015 be not adopted under section 56(2)(viib) of the Act. The assessee explained that the shares were allotted on 31-3-2016 and hence, the FMV as on 31-3-2016 would be applicable. The AO rejected the FMV of shares determined by the assessee on the basis of Average NAV as on 31-3-2015 and 31-3-2016. The AO determined the FMV of shares based on audited Balance Sheet as on 31-3-2015 at Rs. 17.32. Consequently, the AO made addition of the difference between the FMV of shares at which shares were allotted by the assessee and FMV determined by him i.e. Rs. 2.68 (Rs.20 - 17.32) per share thereby making aggregate addition of Rs. 8,55,590/-(Rs.2.68 x 319250) under section

² **Electra Paper and Board (P.) Ltd. Vs ITO (ITAT, Chandigarh) [2022]**

56(2)(viib) of the Act. In first appeal, the assessee remained unsuccessful, hence, preferred appeal before the ITAT.

The Hon'ble Tribunal held that the emphasis was on drawing of balance sheet on date of valuation and rule 11U(b) does not mandate that balance sheet should also be audited on date of valuation. Even if balance sheet is audited subsequently, it would be sufficient compliance of provisions of rule 11U(b).

Since the assessee submitted that in essence, there was no difference between the balance sheet approved in the AGM and the audited financials, the addition made was not justified. Hence, the order was passed in favour of the assessee.

3. Non-obstante clause in section 153A does not exclude applicability of reassessment proceedings: HC

Non obstante clause in section 153A(1) does not mean that an assessment made u/s 153A can never be reopened

In the instant case³, there was a search pursuant to which proceedings under section 153A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") came to be initiated and assessment came to be made under section 143(3) read with section 153A of the Act. It was submitted that once an assessment is made under section 153A of the Act, it is not permissible for the Assessing Officer to reopen such assessment under section 147 of the Act. In support of such submission, reliance was placed upon the decision of the Madhya Pradesh High Court in the case of Ramballabh Gupta v. Assistant Commissioner of Income Tax Inspector Indore,

³ **Amar Jewellers Ltd Vs Assistant Commissioner of Income tax (Gujarat High Court) [2022]**

(2005) 149 taxmann 451 (MP), wherein the court has held that the only fetter put on the power of the Assessing Officer in taking recourse to section 148 is that it cannot be issued in relation to those six assessment years, as defined in section 153A of the Act.

The case was moved by writ, wherein the Court was of the view that Non-obstante clauses are not always to be regarded as repealing clauses nor as clauses which completely supercede any other provision of law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principal enacting provision to which the non-obstante clause is attached.

Non obstante clause in section 153A(1) does not exclude the very applicability of sections 147 and 148. The non obstante clause in section 153A(1) should be understood as merely dispensing with the procedural aspect of section 147. Assessment under section 153A cannot be said to be infallible. If something pointing to escaped income is based on material which was not available or could not be unearthed during the search, there is no reason why such escaped income should not be subjected to reassessment. The word reassessment is not alien even under section 153A.

To say that the assessment undertaken under section 153A can never be reopened under section 147, would be an incorrect statement of law. Thus, the reassessment proceedings were held valid.

[4. Failure of AO to issue scrutiny notice in time couldn't be cured by resorting to sec. 292BB: HC](#)

[Failure of Assessing Officer in issuing notice within period of limitation under section](#)

[143\(2\) which is a notice giving jurisdiction to Assessing Officer to frame assessment cannot be condoned by referring to section 292BB](#)

In the instant case⁴, a search under section 132 was conducted in the case of assessee in connection with search in another case. Accordingly, proceedings under section 153C were initiated against the assessee, and notice under section 142(1) was issued calling for return of income. The assessee filed a reply submitting that the return of income for the assessment year 2012-13 was already filed. Subsequently, the Assessing officer issued notice under section 143(2) on 31-10-2013 and made assessment making certain addition.

The Commissioner (Appeals) dismissed the assessee's appeal.

On second appeal, the Tribunal quashed the assessment order and the order of the Commissioner (Appeals) on ground that the Assessing Officer issued notice under section 143(2) beyond the limitation period as provided under section 143(2) and, consequently, the Assessing Officer could not assume jurisdiction to frame the assessment.

On appeal to the High Court, the revenue contended that defect was curable under section 292BB.

The Hon'ble Court held that the notice u/s 143(2) was issued one month after the period of limitation.

It is well-settled legal principle that issuance of notice beyond period of limitation or absence of notice goes to the root of the matter and is jurisdiction aspect, not a procedural irregularity and same is not curable.

⁴ [PCIT Vs Cherian Abraham \(Karnataka High Court\) \[2022\]](#)

The parameters set out in section 292BB are that the notice was:

- (a) not served upon assessee; or
- (b) not served in time; or
- (c) served upon assessee in an improper manner.

Thus, what significant was service of notice.

In this instant case, the failure of the Assessing Officer in issuing the notice within the period of limitation under section 143(2), which is a notice giving jurisdiction to the Assessing Officer to frame assessment cannot be condoned by referring to section 292BB.