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Direct Tax Newsletter

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NEWS FEED

- **CBDT Includes 'IFSC Unit' in Scope of 'TT Buying Rate' for Computing TDS on Foreign Currency Income**
- **CBDT Notifies Rule 11UACA to Compute Taxable Income in Respect of Sum Received Under Life Insurance Policies**
- **CBDT Extends the Applicability of TP Safe Harbour Rules till AY 2023-24**
- **CBDT Notifies Rule 11UACA to Compute Taxable Income in Respect of Sum Received Under Life Insurance Policies**

1. Mutuality Doesn't Exempt Interest Income of Clubs Even If Banks are Corporate Members - SC

In the instant case[1], the Assessee-club was a mutual association of persons existing solely for the benefit of its members. The main object of the club was to promote social activities, including sports and recreation, amongst its members and various services can be availed by its members.

The surplus income generated by the club consists of payments made by the members deposited in as fixed deposits, post office deposits, national savings certificates etc. The issue before the Supreme Court was:

"Whether the deposit of surplus funds by Clubs by way of bank deposits in various banks wouldn't be subject to tax in the hands of the Clubs considering the principle of mutuality?"

The Supreme Court held that the principle of mutuality is rooted in common sense. This implies that a person cannot earn profit from an association that he shares a common identity with. The essence of the principle lies in the commonality of the contributors and the participants who are also beneficiaries. There has to be a complete identity between the contributors and the participants. Therefore, it follows that any surplus in the common fund shall not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. The principle of mutuality would not apply to interest income earned on fixed deposits made by the Clubs in the banks, irrespective of whether the banks are corporate members of the club or not. If there is an entry of a third party or non-member to utilize the funds of the club and return the same with interest, then the parties' relationship is not on the basis of privity of mutuality. The essential condition of mutuality, i.e., identity between the contributors and participators, would end. The relationship would then be like any other commercial relationship, such as that between a customer and a bank where the customer makes a fixed deposit to earn an interest income.

If the principle of mutuality is to apply, where many people who contribute to a fund are ultimately paid the surplus from the fund. In that case, it is a mere repayment of the contributors' own money. However, if the very same surplus fund is not applied for the common purpose of the club or towards the benefit of the members of the club directly but is invested with a third party who has the right to utilize the said funds, subject to payment of interest on it and repayment of the principal when desired by the club, then, in such an event, the club loses its control over the said funds.

When surplus funds of a club are invested as fixed deposits in a bank, and the bank has a right to utilize the said fixed deposit amounts for its banking business subject to repayment of the principal along with interest, the identity is lost.

Thus, the interest income earned on fixed deposits made in the banks by the Clubs has to be treated like any other income from other sources.

[1] **Alrameez Secundrabad Club etc. vs. CIT (Supreme Court of India) [2023]**

2. Entire Capital Gain to be Taxed in Assessee's Hand If It Was Found That Other Sellers Were Controlled Puppets - ITAT

In the instant case[2], a search under section 132 was conducted in the case of a group wherein an agreement for the sale of land was found and seized. Assessee and four other persons were party (Seller) to such agreement. Considering it as escapement of income, an assessment under section 153C was initiated on all the sellers.

Contending that all four persons are closely related to assessee and it was assessee who negotiated the sale of land on behalf of everyone, the Assessing Officer (AO) held that the other four persons were men of little or no means and that they were neither interested in the land nor earned any share of profit. Accordingly, AO decided to tax entire Capital Gains in the hands of the assessee and made additions.

Opined that all four persons were identifiable as supported by the relevant documents, the CIT(A) deleted the additions made by AO. Aggrieved by the order, AO filed an appeal to the Cochin Tribunal.

The Tribunal held that the assessee was the owner of the land, executor of its sale, and beneficiary of sale proceeds, and other sellers were puppets controlled by the assessee. It was also observed that all four sellers were closely associated with the assessee. They were employees of the assessee's or his son's concerns.

The other sellers also lacked the capacity to purchase land. It was also found that the agreement was valid, and its cancellation as well as the defect leading thereto, were completely unevidenced. Therefore, revenue was justified in considering the assessee as the beneficial owner of the land and the assessment of capital gains in the assessee's hands was also justified.

3. Banking Channel Sales Can't be Considered Bogus Without Allowing Cross-examination of the Purchaser's Statement | ITAT

In the instant case[3], the assessee was engaged in the business of rice selling. During the year under consideration, it made rice sales to a party. A survey was conducted under section 133A upon the aforesaid party, and his statement was recorded.

In the statement, he stated that two accountants of the assessee came to him and offered money in lieu of opening a bank account and issuing signed blank cheques. Due to financial crises, he accepted the offer, opened an account in a bank, and handed over the chequebook to the said persons. The assessee operated the bank account, and he had not made any purchases from the assessee during the year.

Based on the statement, the Assessing Officer (AO) rejected the books of accounts maintained by the assessee and made additions under section 68, contending that the assessee made bogus sales of rice.

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

The Tribunal held that the entire amount received from the party was through the banking channel. In the assessment and in appeal proceedings, no

[2] **Deputy Commissioner of Income-tax v. T.G. Chandrakumar (Cochin-Trib.) [2023]**

[3] **Ganesh Rice Mills v. Deputy Commissioner of Income-tax (Amritsar-Trib.)[2023]**

discrepancies were found in the assessee's stock, including the closing and opening stock. Despite this, the books of account were rejected by AO without finding any lacuna in the books.

AO made the entire addition based on a statement recorded from the party but said statement was not served to the assessee. The reasonable opportunity to the assessee was denied without allowing cross-verification of the party. AO had assumed that the cash deposited in the party's bank account belonged to the assessee.

Thus, said additions were based on surmises and conjectures. The assessee cannot be taxed doubly on the same amount which was already declared in the return of income. Accordingly, additions based on doubts or conjecture were liable to be quashed.

4. AO Can't Reference Only One of Two Available Guideline Values for the Value Property – HC

In the instant case[4],

Assessing Officer (AO) reopened the assessment of the assessee under section 147 on the ground that he had not disclosed the value of the property and passed the assessment order under section 144B(1) in a faceless manner.

Assessee filed writ petition before the Madras High Court contending that the assessment had taken only the guideline of the Gandhi Nagar alone. In contrast, there were two guideline values available to value property. Thus, directions should be issued to AO to redo the assessment.

The Madras High Court held that AO had taken a wrong valuation for the property. In the assessment order, there was no discussion of the two guideline values (one for Canal Street and another for Gandhi Nagar). The assessment has taken only the guideline value of Gandhi Nagar alone. Therefore, the assessee should be granted one more opportunity.

Accordingly, the impugned assessment order was quashed, and the AO was directed to grant the personal hearing. At his liberty, the assessee can produce records, especially the guideline value provided by the concerned authorities. AO was directed to pass the assessment order on merits by taking appropriate facts.

[4] **R. Rajasekaran v. ACIT (Madras High Court)[2023]**