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Tax Digest

- Recent case laws

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NEWS FEED

- CBDT notifies Form 29D to get refund of tax deducted under section 195
- CBDT amends Rule 17 & Form 10 providing accumulation of income by entity approved u/s 10(23C)

1. Section 148 read with Section 292B: “Reopening”:

Where AO issued reopening notice for assessment year 2015-16 and later, by way of corrigendum dated 11-4-2017 stated that same was issued for assessment year 2010-11, said corrigendum could not be said to have cured a procedural irregularity as contemplated under section 292B and jurisdiction to reopen assessment for assessment year 2010-11 would be by way of issuance of corrigendum which was time barred, thus, impugned reopening notice and corrigendum were to be set aside

In the instant case¹, the AO issued a notice reopen the assessment for A.Y. 2015-16 and thereafter issued a corrigendum stating that the assessment year mentioned in the notice u/s 148 of the Act contained a “typographical error”, and the reopening was actually sought for A.Y. 2010-11.

Aggrieved by the same, the assessee petitioner preferred a writ petition on the ground that the proposed reopening of the assessment was time barred.

The assessee petitioner submitted that though the initial notice is dated 31-3-2017 (mentioning “A.Y. 2015-16), it was in fact issued on 4-4-2017 (when the corrigendum was issued). They also produced the copy of the track consignment of the relevant post office, which showed that the notice in this case was booked on 4-4-2017 and was delivered on 12-4-2017. Given the period of limitation was reopening assessments u/s 147 of the Act, the notice was required to be issued on or before 31-3-2017 and the notice issued on 4-4-2017 did not

confer the jurisdiction upon the authorities as it became time barred.

It was contended by the assessee petitioner that the corrigendum dated 11-4-2017 has to be considered as a fresh notice and it cannot be a corrigendum to the earlier notice. What is sought to be corrected is not a mere *procedural irregularity* as contemplated under section 292B of the Income-tax Act, 1961 but a *material mistake*. On the said ground, it was contended that, even presuming the date of issuance of first notice is dated 31-3-2017, issuance of the second notice in the style of corrigendum which is admittedly done on 11-4-2017 is time barred.

Meanwhile, the AO could not substantiate his contention of treating the date of issue of notice to be 31.3.2017.

Hence, considering the facts and circumstances of the case, the writ was allowed and the notice was set-aside.

2. Section 115BBC: Absence of PAN in confirmation letters of donors won’t give rise to suspicion that donations were anonymous: ITAT

Where assessee-trust provided details of donors along with names and addresses and furthermore confirmation letters from donors were also provided to Assessing Officer in respect of donation received, mere absence of PAN in confirmation letters of donors would not give rise to suspicion that they were anonymous donations; maintenance of name and address details of contributors would be a sufficient document to establish identity of donors as prescribed under section 115BBC

¹ Infineon Technologies AG Vs. DCIT(International Taxation) (High Court of Karnataka) [2022]

In the instant case², the assessee is a Trust running educational institutions in the name and style of Siddhartha Academy of General & Technical Education in and around Vijayawada. The assessee filed its return of income for the AY 2016-17 admitting total income of Rs. NIL. The case was selected for scrutiny and based on the submissions made by the assessee's representative, AO noted that the assessee has received a corpus donation of Rs. 23.89 crores out of which the assessee could not file the confirmation letters for Rs. 15.44 crores. The Ld. AO treated the said sum as anonymous donation u/s 115BBC of the Act and made additions. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the CIT(A).

The assessee filed the confirmations at appeal and also submitted that these confirmation letters had already been filed and available on the electronic portal of the department. He provided the acknowledgement number before the Ld CIT(A) for the same. Considering the submissions made before the Ld. CIT(A), the appeal was allowed. Aggrieved by the order of the Ld. CIT(A), the Revenue preferred an appeal before the ITAT.

Before the Hon'ble ITAT, the Revenue claimed that no PAN details were submitted for few donors, and the confirmations were filed at the fag end of the assessment proceedings giving no time for the IT authorities to cross examine the donors.

The Hon'ble ITAT observed and held that confirmation letters from donors were provided to Assessing Officer and the donations were made either by cheque or DD or through other banking channel. Mere absence of quoting the PAN in the confirmation letters of donors would not give rise to

suspicion that donations received by assessee were anonymous donations and maintenance of name and address details of contributors would be a sufficient document as prescribed under section 115BBC of the Act. Since the assessee established the identity of the donors as provided under section 115BBC, donations received could not be categorized as anonymous donations and could not be subjected to tax as per provisions of section 115BBC.

Hence, the appeal was allowed in favour of the assessee.

3. No prosecution proceedings if Sec. 54F exemption not accepted by AO was a bona fide claim by assessee: HC

Where assessee had made a bona fide claim, claiming exemption under section 54F which was not accepted by Assessing Officer and subsequently, tax was also paid, prosecution could not have been initiated for willful evasion of Tax

In the instant case³, the assessee sold a property and subsequently purchased another property and declared long term capital gain after claiming deduction under section 54F. The Assessing Officer disallowed deduction claimed by assessee under section 54F on ground that assessee had purchased an industrial property. Penal proceedings were also initiated under section 271(1)(c) for wrong claim of deduction under section 54F. Assessment Order passed by Assessing Authority was upheld by Appellate authority. It was case of prosecution that accused had willfully attempted to evade tax by making a false claim, which were not allowable

² **ACIT Vs. Siddhartha Academy of General & Technical Education (ITAT Vishakapatnam) [2022]**

³ **R Vasudevan Vs. DCIT (High Court of Madras) [2022]**

under provisions of Income Tax Act. Hence accused had committed an offence under section 276C(1). Show cause notice was issued and since reply given by accused was not satisfactory, prosecution was initiated under section 276C(1) and 277.

In response to the same, the assessee filed a writ petition seeking quashing of complaint filed by respondent for offences under section 276C(1) and 277.

It was observed and held by the High Court that :

- It was a bona fide claim of assessee that on sale of property he has purchased another property. Fact remains that another property, which was purchased by assessee was only a residential house not an industrial property.
- There was no suppression of facts and assessee has originally disclosed the receipt of sale of the property. It cannot be said that merely an exemption is claimed and investment has not been made.
- It was not observed anywhere that assessee claimed false or bogus and it could not be said that there is concealment or wilful evasion of Tax.
- Thus, income was not suppressed, only exemption had been claimed. It is also observed in the penalty proceedings that there was no suppression of materials, it was only bona fide. In such a view of matter this it is viewed that continuation of prosecution is nothing but futile exercise and abuse of the process of law.

Accordingly, complaint for offences under section 276C(1) and 277 were quashed.

4. Assessment concluded u/s 143(1) can't be disturbed by issuing sec. 153A notice if no incriminating doc. was found: ITAT

Where assessment framed under section 143(1) for assessment year 2009-10 was unabated/concluded assessment on date of search, same deserved to be undisturbed in absence of any incriminating material found in course of search relatable to such assessment year

In the instant case⁴, the Assessing Officer originally framed the assessment for A.Y. 2009-10 under section 143(1) of the Act. The Assessing Officer did not issue any notice under section 143(2) on the assessee and processed the return under section 143(1).

Thereafter, The Authorized Officer conducted a search under section 132 upon the assessee on 18-12-2010.

As a result of a search conducted under section 132 of the Act and in response to notice served under section 153A filed return for aforesaid assessment year, the Assessing Officer in the absence of any incriminating material found in course of search relatable to such assessment year, made certain disallowances/additions in assessment framed under section 153A:

- (a) Interest income treated as income from other sources.
- (b) Addition on account of bogus purchases.
- (c) Disallowances under section 40(a)(i).

On appeal, the assessee contended that for making aforesaid additions/disallowances the Assessing Officer had not referred to any single seized

⁴ **Arihant Universal Realty (P.) Ltd. Vs DCIT (ITAT, Mumbai) [2022]**

document found during course of search and hence it could be safely concluded that there was absolutely no incriminating material found during the course of search for making the aforesaid additions/disallowances.

The Commissioner (Appeals) dismissed the objection of the assessee on the ground that the assessment to be framed under section 153A clears all the decks and would enable the Assessing Officer to assess or reassess the total income as per the provisions of the Act irrespective of incriminating materials found in the search. He also confirmed the additions/disallowances made by the Assessing Officer.

On appeal before the Hon'ble ITAT, it observed and held that unless there is any incriminating material found during the course of search relating to such concluded year, the statute does not confer any power on the Assessing Officer to disturb the findings given thereon and income determined thereon as finality had already been reached thereon and such proceeding was not pending on the date of search to get itself abated. It is not in dispute that both the Assessing Officer and the Commissioner (Appeals) had admittedly not made any reference to any seized material found during the course of search in their orders relating to the completed assessment year with regard to the items that were subject matter of disallowances/additions. The disallowances/additions that were made by the Assessing Officer in section 153A assessment were already forming part of the regular books of account and were duly recorded in the regular books of the assessee and cannot be construed as incriminating in nature. Every assessee would be having his regular books of account (where books are maintained) and would be filing his regular returns of income and assessments framed accordingly. If

such person is subjected to search and the very same regular books of account were found at the time of search and if the Assessing Officer tries to take a different view on the already recorded transactions in the said regular books of account in the search assessment under section 153A which is contrary to the view taken by him in the original scrutiny assessment under section 143(3) or intimation under section 143(1), then it would only result in giving another innings to the Assessing Officer to review his own earlier decision on the very same set of facts and figures. This would make the entire scheme of the Act meaningless and the Assessing Officer would be conferred with unfettered powers to review the earlier decisions taken either by him or by his predecessor on the very same issue which cannot be the intention of the statute. That's why the Legislature had duly drawn a distinction between the completed and abated assessments.

Hence, the disallowances/additions made thereon were ordered to be deleted.