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Tax Digest

- **Recent case laws**

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NEWS FEED

CBDT Releases Order to Waive off Tax Demand Outstanding as of Jan 31, 2024; Capped at Rs. 1 Lakh per Assessee

Order, F.no. 375/02/2023, dated 13-02-2024

In the Union Budget 2024 speech, Finance Minister Nirmala Sitharaman announced the extinguishment of the tax demands until Assessment Year 2015-16. Subsequent to the speech, the Central Board of Direct Taxes (CBDT) has released an order to remit and extinguish the tax demands under the Income Tax Act, 1961, Wealth Tax Act, 1957 or Gift Tax Act, 1958.

1. Tax Deducted on Grants u/s 194C/194J Wouldn't Disentitle Assessee to Claim Sec. 11 Exemption

In the instant case[1], the assessee was a non-governmental organisation registered as a charitable institution under Sections 12A read with 12AA and 80G. The assessee was working to uplift the poor and underprivileged children and women, improve their health, preserve the environment, and address other social causes. The assessee receives various grants from the government and the private sector to fulfil its charitable objectives.

During the assessment proceedings, the Assessing Officer (AO) observed that the donor deducted tax under sections 194C and 194J while allocating requisite grants to the assessee. Contending that receipts were towards professional or technical services or contractual income and the assessee was hit by the proviso to section 2(15) of the Act, AO denied the exemption under section 11.

Aggrieved by the order, the assessee filed a revision petition under section 264, but all in vain. Subsequently, the assessee filed a writ petition to the Delhi High Court.

The High Court held that the Proviso to Section 2(15) states that the advancement of any other object of general public utility involving trade, commerce, or service related to business for a fee is not considered charitable unless it's directly linked to advancing public utility, and the revenue from such activities doesn't surpass 20% of the trust's total receipts in the previous year.

In the instant case, the sole reason to construe the receipt by donors under the tax regime was on the assumption it was received towards professional/technical services or contractual income as tax was deducted under Sections 194C and 194J. Further, there was no element of activity in the nature of trade, commerce or business, or any activity or rendering any service in relation to any trade, commerce or business.

If the deductor, under misconception, deducted tax under Sections 194C and 194J, it would not disentitle the assessee to claim benefit under Sections 11 and 12 unless the case of the assessee was specifically hit by the Proviso of Section 2(15).

Therefore, the proviso to Section 2(15) would not be attracted merely based on the tax deduction by the donor under a particular head, and accordingly, the writ petition was allowed.

2. Jurisdictional PCIT Can Exercise Power u/s 263 Over Order Passed By Faceless Assessment Unit

In the instant case[2], the Assessee filed its return for the relevant assessment year, which was subsequently selected for the scrutiny assessment under the E-assessment Scheme 2019. The assessment under section 143(3) was finalised under the faceless assessment scheme by accepting the income returned by the assessee.

Afterwards, the Principal Commissioner of Income Tax (PCIT) noticed that the assessee debited interest expenditure while following the project completion method and exercised jurisdiction under section 263.

Contending that PCIT has no jurisdiction to invoke revisionary power under section 263 as NFAC passed the assessment order, the assessee filed an appeal before the Mumbai Tribunal.

ITAT Held

[1] Aroh Foundation vs. Commissioner of Income Tax (Exemption) - [2024] (High Court of Delhi)

[2] RDC Ventures vs. Principal Commissioner of Income Tax - [2024] (Mumbai-Trib.)

The Tribunal held that section 144B provides the whole procedure of faceless assessment. As per the detailed procedure laid down in clause xxxi of section 144AB(1), the National e-Assessment Center shall, after completion of the assessment, transfer all the electronic records of the case to the Assessing Officer (AO) having jurisdiction over the said case for such action as may be required under the provisions of the Act.

Section 144B dictates that the faceless assessment unit shifts electronic case records to the AO with territorial jurisdiction post-assessment. Subsequent actions fall under the purview of the AO and PCIT with corresponding territorial jurisdiction.

Accordingly, it was held that once the records are transferred to the jurisdictional AO on completion of the assessment, the jurisdictional PCIT assumes jurisdiction and, therefore, can exercise power under section 263 over the order passed by the faceless assessment unit.

3. Compensation Received for Hardship Faced Due to Vacating Flat for Redevelopment Is Capital Receipt

In the instant case[3], the assessee had a flat in a building. During the year under consideration, the said building had gone for redevelopment, and the assessee received compensation for moving to a new place as it resulted in inconvenience and hardship to the assessee. The assessee contended that the amount received from the builder was on account of hardship, and thus, it was a capital receipt in nature. Accordingly, it was not included in the total income while furnishing the return of income.

The Assessing Officer (AO) observed that the assessee had not utilized any amount of its receipt for his alternate accommodation. Contending that it was a revenue receipt in the form of alternate accommodation rent provided by the builder for the development of his residence, AO continued to treat such amount as income of the assessee and taxed it under the head 'income from other sources'.

On appeal, CIT(A) upheld the order of the AO. Aggrieved by the order, the assessee filed an appeal to the Mumbai Tribunal.

The Tribunal held that the assessee received compensation from the builder for alternate accommodation. However, the assessee did not utilize these funds for accommodation; instead, he adjusted and lived with his parents. It indicated that even though the assessee did not utilize the rent received for his accommodation, he faced hardships by vacating the flat for redevelopment and adjusting himself during the period.

ITAT followed the decision of the coordinate bench in the case of Smt. Delilah Raj Mansukhani v. ITO (ITA No. 3526/Mum/2017 dated 29-1-2021), wherein it was held that the compensation paid by the builder on account of hardship faced by the owner of the flat due to displacement of the occupants of the flat is in the nature of hardship allowance or rehabilitation allowance and same was not liable to tax.

Accordingly, the receipt of compensation for hardship was in the nature of capital receipt, and the additions made were to be deleted.

[3] Ajay Parasmal Kothari vs. Income Tax Officer - [2024] (Mumbai - Trib.)

4. Discrepancy Between Property Values in ATS and Sale Deed Constitutes a Prima Facie Case for Income Escaping Assessment

In the instant case[4], the assessee had purchased a residential plot pursuant to a sale agreement in which the assessee agreed to pay Rs. 34 lakhs (approximately) to purchase a house property, against which Rs. 6 lacs were paid in cash in advance at the time of signing of an agreement, and the rest was assured to be paid by 15.03.2012.

When asked, the assessee submitted that the assessee paid Rs. 12 lakhs through various cheques to purchase the property through a conveyance deed registered on 22.03.2012 before the Sub Registrar. However, dissatisfied with the assessee's reply, the Assessing Officer (AO) concluded that the assessee had purchased the property for Rs. 34 lakhs as per the Agreement to Sale dated 12.02.2012 instead of Rs. 12 Lacs declared.

Contending the discrepancy of the values as a reason to believe, the AO initiated reassessment proceedings by issuing notice under section 148. The assessee opined that the discrepancy in value does not form a 'reason to believe' to initiate reassessment proceedings.

On appeal, the CIT(A) confirmed the action of AO. Aggrieved-assessee filed an appeal before the Jaipur Tribunal.

The Tribunal held that according to the AO, this information and documents were enough ''reasons to believe'' that the assessee's income had escaped assessment. Therefore, he issued a notice under section 148 of the Act.

In this regard, it was found that the AO invoked the provisions of Section 148 after coming to know about the agreement to sell dated 12-02-2012. Even the existence of the said agreement to sell dated 12-02-2012 is not disputed, and the copy of the same was furnished by the assessee, which means that the same was already in the possession of the assessee.

The principal ''prima facie belief'' of the AO that income had escaped assessment is enough at the stage of reopening and merits of the matter are not relevant at this stage. The only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Therefore, whether the materials would conclusively prove the escapement is not a concern at that stage. This is so because of the formation of belief by the AO is in the realm of subjective satisfaction.

Accordingly, it was held that AO's action of reopening the assessee's assessment was found to be in accordance with the provisions of the law.

[4] Smt. Geeta Devi Sharma vs. ITO - [2024] (Jaipur - Trib.)