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## Tax Digest

- Recent case laws

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**60 HOUR TAX SURVEY AT BBC OFFICES- TAX EVASION:**

The Income Tax department said it found several evidences pertaining to the operation of the organization which indicate that tax has not been paid on certain remittances which have not been disclosed as income in India by the foreign entities of the group.

*SOURCE: BUSINESS TODAY*

### 1. Section 14A:

**Where shares were held by the assessee (a housing finance company) as stock-in-trade, dividend earned on said shares would not attract section 14A**

In the instant case<sup>1</sup>, the assessee is a subsidiary of the Punjab National Bank and is engaged in the business of retail lending as well as long term finance for construction of homes. It earned dividend on shares held as stock-in-trade. There was a disallowance made u/s 14A of the Act for expenditure incurred to earn the dividend income on shares held as stock-in-trade. The assessee preferred an appeal before the CIT(Appeals) and the ITAT without relief. Aggrieved, the assessee preferred an appeal before the High Court.

The Hon'ble High Court observed and held that the issue is no longer *res integra*.

It was an admitted fact that the exempt income was earned by the assessee from the investment held by it as stock-in-trade. This issue had been conclusively determined by the Hon'ble Supreme Court in *Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640/[2018] 15 SCC 523*. The Hon'ble Court after deliberating on the object and purpose of section 14A, conclusively held that in cases where shares are held by *the* assessee as stock-in-trade, the dividend earned on the said shares is incidental and would not attract the provisions of section 14A of the Act.

It is to be kept in mind that in those cases where shares are held as "stock-intrade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it

would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. Relying on the Supreme Court judgement, the present Court dismissed the appeal.

### 2. Section 68:

**Where huge cash deposits was found in the bank account of the assessee during a search operation since the assessee did not file return of income under section 139 or pursuant to notice under section 148, his explanation that alleged cash deposits were related to transaction in connection with a property and said transactions were in course of business could not be accepted**

In the instant case<sup>2</sup>, for the A.Y. 2012-13, no return of income had been filed by the assessee either at the original instance, i.e. u/s 139(1) of the Act, or pursuant to the issuance of notice under section 148 of the Act for reopening.

An Authorized Officer conducted a search operation upon the assessee wherein documents relating to huge cash deposits in the saving account was found. On the basis of this, the Assessing Officer passed a Best Judgement assessment order under section 144 of the Act treating the same to be additions u/s 68 of the Act.

Show cause notices were issued to the assessee seeking explanation. However, no submissions were being made on the merits of the matter and the assessee only kept reiterating his request for documents.

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<sup>2</sup> **B. Ramamoorthy vs. Assessment Officer, Vellore (Madras High Court) [2023]**

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<sup>1</sup> **PCIT v. M/s PNB Housing Finance Ltd. (Delhi High Court) [2023]**

Later, the he put forth an explanation that the substantial cash deposits that have been made in the savings bank account relate to a transaction in connection with the property situated at Vellore Bus stand.

The Hon'ble High Court held that the responses submitted by the assessee were especially incriminating insofar as they referred to the involvement of heavy cash transactions in respect of the vellore property. Incidentally, a vague statement was made that the cash deposits were in the course of usual business transaction. In the absence of any return of income filed by him, such a statement could not be countenanced or accepted. Thus, the petition was dismissed.

### 3. Section 270A:

**Where assessee sold land at a price less than stamp duty value and the AO made additions on basis of difference between value declared by assessee and value determined by DVO, since value determined by DVO was based on estimation, additions made on basis of estimation could not be a foundation for under-reporting of income for the purpose of imposition of penalty under section 270A of the Act**

In the instant case<sup>3</sup>, the assessee was engaged in the business of solar power generation filed Return declaring total income at Nil for the Assessment year 2017-18. The AO completed assessment u/s 143(3) of the Act making an addition u/s 43CA. It was found that during the A.Y. 2017-18, the assessee had sold certain land on various dates at a price less than the stamp value. The AO proposed to

make addition on the basis of stamp value. The assessee made a request for making a reference to the DVO. The AO Completed assessment by taking note of stamp value in certain cases which was subject to rectification on the basis of report of DVO. Rectification order passed under section 154 of Income Tax Act, 1961 reducing the addition to Rs.7,05,000. Additions were made on basis of difference between value declared by assessee at Rs.71.83,800 and value determined by DVO at Rs. 78,88,800. Consequently the AO also imposed penalty under section 270A at Rs. 6,99,669. The assessee thereafter preferred an appeal before the Hon'ble Tribunal (ITAT).

On a perusal of the facts and after observing the circumstances of the case, the Hon'ble ITAT observed that the value determined by DVO was an estimate based on valuations of other properties at different rates and then those rates were averaged to find out the value which ought to have realised on transfer. The difference between the value declared by the assessee and the value determined by the DVO was minimal.

Pertinently, clause (b) of sub-section 6 of section 270A of the Act dealing with cases where imposition of penalty cannot be done states "the amount of underreported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer ....".

Thus an addition made on the basis of an "estimation" could not provide foundation for under-reporting of income for the purpose of levy of penalty u/s 270A of the Act. Thus, the imposition of penalty u/s 270A could not be sustained and the appeal was allowed.

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<sup>3</sup> [Jaibalaji Business Corporation \(P\) Ltd. vs. ACIT \(ITAT Pune\) \[2023\]](#)

**4. Section 264:**

**Where the assessee preferred appeal before Commissioner (Appeals) against the assessment order, application under section 264 for revision before Commissioner was not maintainable**

In the instant case<sup>4</sup>, the assessee is a charitable Society running an educational institution. For the assessment years under consideration, the assessee filed a return declaring total income to be NIL. The case of the assessee was selected under Computer Aided Scrutiny Selection (CASS) and order u/s 143(3) of the Act was passed making an addition due to violation of section 13 of the Act.

Aggrieved, the assessee filed an appeal before Commissioner of Income Tax [CIT(A)] which was transferred to National Faceless Appeal Centre(NFAC). Simultaneously, the assessee made an application for revision u/s 264 of the Act.

The assessee thereafter sought withdrawal of filed appeal earlier. The CIT(A) did not consider the request and rejected the revision filed on the ground that the appeal before NFAC was pending and that an order cannot be revised pending appeal. The assessee thereafter filed a Writ Petition before the High Court.

The Hon'ble High Court observed and held that on perusal of section 264 of the Act, it is clear that the CIT(A) cannot revised an order where an appeal was pending. Hence, the question of considering the request of revision does not arise. Accordingly, the Court dismissed the petition.

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<sup>4</sup> **Viswasanthi Educational Society vs. CIT (High Court of Andhra Pradesh) [2023]**