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Tax Digest

- Recent case laws

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Direct Tax Updates

Income Tax Department Cautions Public Against Fake Job Offers –

The income tax (I-T) department on Tuesday cautioned general public against falling prey to fraud job offers, saying that aspirants should only consider advertisements appearing on either its official website or that of the Staff Selection Commission (SSC).

"Income Tax Department cautions the public not to fall prey to fraudulent persons misleading job-aspirants by issuing fake appointment letters for joining the Department," the I-T department tweeted.

1. Section-11:

Failure to file TAR in Form-10B along with ITR does not pave grounds for disallowance of deduction u/s-11

In the instant case[1], the assessee had filed its return of income for the Assessment Year 2017-18 against which the AO disallowed for deduction u/s 11 of the Income Tax Act, 1961 which was subsequently confirmed by the CIT(A) also.

Facts of the case state that the assesse had failed to file Tax Audit Report in Form 10B along with the filed return. However, the same was filed later online before the completion of assessment u/s 143(1) of the Act. But, since the Tax Audit Report was not available along with the Return at the time of assessment, therefore Centralized Processing Centre (CPC) had made adjustment disallowing deduction u/s 11 of the Act to the assessee.

Aggrieved by the decisions of the AO and CIT(A), the assessee preferred an appeal before the Hon'ble Tribunal. The ld. Counsel for the assessee reasoned by giving reference to the order dated 04.10.2021 passed by the ld. CIT(Exemption), Kolkata whereby the delay in filing of Form 10B had been condoned by him. In response, the competent authority therefore found no justification in denying deduction u/s 11 of the Act to the assessee. Accordingly, the impugned order of the ld. CIT(A) was quashed aside and assessee's appeal was allowed.

[1] **Gobind Ram Goel Charitable Trust Vs Income Tax Officer, Kolkata (ITAT Kolkata) [2022]**

2. Section 37:

Provision for liability appearing in the balance sheet under the head "provisions" cannot be added back to income and disallowed instead of provisions debited to the Profit and Loss Account

In the instant case[2], the assessee had charged a certain amount of provision to its Profit & Loss A/c and had correctly added back the same while computing the total income. The AO, however, added the amount of cumulative provisions for various liabilities appearing in the Balance Sheet under Current Liabilities while framing the assessment u/s 143(3) of the Act.

Aggrieved, the assesee went for an appeal to the CIT(A) who allowed the assessee's appeal and deleted the said addition on the ground that the said amount under consideration represented the cumulative figure of "provisions for various liability" of earlier years.

However, as a matter of fact the assessee charged to the profit and loss account a sum of Rs. 1246.57 lakhs on account of provisions created during the year and suo motto added back while computing the total income and correct income was returned in the return of income. The AO ,however, added the amount of cumulative provisions for various liabilities amounting to Rs. 13,37,84,83,000/- which was appearing under the head "provisions" under the head current liabilities in the balance sheet while framing the assessment. The matter was taken up in appeal before the First Appellate Authority and the Ld. CIT(A) allowed the assessee's appeal by directing the Ld.AO to delete the addition on the

[2] **Assistant Commissioner of Income Tax, Kolkata Vs Eastern Coalfields Limited (ITAT Kolkata) [2022]**

ground that this amount was not charged to the P & L account and in fact represented cumulative figure of "provisions for various liability" of earlier years. While giving appeal effect to the order of the ld. CIT(A), the AO reduced Rs. 1303,77,23,000/- instead of Rs. 13,37,84,83,000/-, thereby not deleted the disallowance/addition to the tune of Rs. 34,07,60,000/- from the assessed income.

Hence, the assessee preferred an appeal before the Ld. CIT(A). In the appellate order, the ld. CIT(A) recorded a find that the ld. AO reduced Rs. 13,03,77,23,000/- instead of Rs. 13,37,84,83,000/- from the assessed income thereby not giving appeal effect to the tune of Rs. 34,07,60,000/-. Thus the ld CIT(A) allowed the appeal of the assessee by directing the AO to reduce further Rs.34,07,60,000 from the assessed income.

After hearing the rival submissions and perusing the materials on record including the appellate order, the Hon'ble Tribunal observed that the Ld. CIT(A) has correctly allowed the appeal by directing the Ld. AO to reduce a sum of Rs. 34,07,60,000/-, as the Ld. AO has wrongly taken the figure of Rs. 1303,77,23,000/- instead of Rs.1337,84,83,000/-.

In view of above facts, the appeal of the revenue was dismissed.

3. Section-143(3) / 147-"Re-Assessment":

Reopening after expiry of four years from the end of the relevant A.Y. without there being any failure on the part of the assessee to disclose any material fact with respect to assessment of income was considered invalid

In the instant case[3], the assesse had preferred an appeal objecting the order of the CIT(A) upholding the order of AO on the legal issue that the assessment framed u/s 143(3)/147 of the Act was bad in law as the same was reopened after expiry of four years from the end of the relevant assessment year without there being any failure on the part of the assessee to disclose any material fact with respect to assessment of income.

Aggrieved, the assessee went before the Tribunal for an appeal wherein the ld. AR argued that the reopening could be made after expiry of four years from the end of the relevant assessment year u/s 147 of the Act only after the conditions laid down in the 1st Proviso to the abovementioned section gets satisfied. He further argued that the said proviso states that an assessment which had been framed u/s 143(3) of the Act provides that no action should be done after expiry of four years from the end of relevant assessment year unless the income chargeable to tax had escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts for assessment of income in that assessment year. The Ld. AR submitted that the assessment was already framed u/s 143(3) in this case and therefore to reopen the assessment without following the provisions as provided in the 1st Proviso to section 147 of the Act would render the reassessment without jurisdiction. He further submitted that order of CIT(A) upholding the reopening of assessment was, therefore, wrong and invalid.

After hearing the rival submissions and verification of the relevant records presented before the

[3] **Andaman And Nicobar Island Integrated Development Corporation Ltd. Vs Deputy Commissioner of Income Tax, Port Blair (ITAT Kolkata) [2022]**

Tribunal, it was held that since the reopening was made after the expiry of a period of four years from the end of relevant assessment year and the assessment under consideration was framed u/s 143(3), therefore, the reopening had to be made in terms of stipulation of 1st Proviso to section 147. And as both the AO as well as CIT(A) in the present case had failed to demonstrate any failure on the part of the assessee to fully and truly disclose the material facts for the income which was related in the assessment of income, the Tribunal held that there was a mistake of mentioning the correct assessment year while deducting the TDS and therefore, the tax deducted at sources by the assessee did not get displayed on the TIN system which got rectified later on and the TDS deducted appeared correctly in the TIN system of the assessee. The Tribunal was of the view that the reopening had been made without satisfying the conditions as envisaged in the 1st Proviso to section 147 of the Act.

Accordingly, the order of the CIT(A) was set aside by holding that the reopening had not been validly made and the reassessment proceedings and consequent assessment framed was quashed.

4. Section- 54(F):"Capital Gains-Exemption":

Where sale deed is executed in favour of assessee within a period of three years from date of transfer of shares but the payments are made prior to one year before date of such transfer, then the assessee is entitled to claim exemption under section 54F

In the instant case[4], the daughter of the assessee had entered into an agreement for purchase of a flat on 30-12-2006 with the builder. On 21-8-2008, the assessee transferred his shares held by him in a company on which long term capital gain was offered. Thereafter, under an agreement, on 18-3-2009, the flat was transferred in the name of the assessee and thereafter a registered sale deed was executed in favour of the assessee on 28-3-2011. The assessee had acquired the residential property i.e. the flat under an agreement to sell in respect of undivided land and an agreement to build; thus, the instant case was a case of construction of a residential house. The sale deed was executed in favour of the assessee within a period of three years from the date of transfer of shares on 28-3-2011, i.e., prior to expiry of three years from the date of transfer of shares on 21-8-2008. Therefore, the authorities under the Act ought to have examined the claim of the assessee whether or not the assessee had constructed a residential house within a period of three years from the date of transfer of original property. It is also pertinent to note that exemption under section 54 is dependent on the date of acquisition of the property and not on the date of payment made in respect of such property. It is also noteworthy to mention that to claim an exemption under section 54F, it is not necessary that the same sale consideration should be used for construction of a new house property. It is also noteworthy that section 54F is a beneficial provision, which has been enacted with an object to promote investment in housing and enable the assessee to save tax on capital gains. It is a well settled rule of interpretation that benevolent provision should be interpreted liberally bearing in mind the object for which the provision is enacted. Thus, from narration of facts, it is evident that the assessee had complied with the conditions stipulated under section 54F and was entitled for exemption. Therefore, the finding recorded by the Tribunal that since payments were made prior to one year before the date of transfer

[4] **M. George Joseph Vs Deputy Commissioner of Income Tax, Bangalore (High Court of Karnataka) [2021]**

of shares and, therefore, the assessee is not entitled to claim exemption under section 54F, cannot but be termed as perverse. For the aforementioned reasons, the substantial question of law is answered in the negative and in favour of assessee.