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Tax Digest

- Recent case laws

February 27, 2023



CBDT notifies new audit reports to be furnished by charitable or religious trusts and other institutions

NOTIFICATION G.S.R. 118(E) [NO. 7/2023 [F. NO.370142/47/2023-TPL

1. Section 40A(3):

Disallowance u/s 40A(3) of said cash payment was not justified where the assessee purchased land and on demand of sellers made payment in cash towards part of sale consideration -

- a. sellers were identified, and**
- b. had admitted receipt of cash payment before registering authority under due process and**
- c. the Assessing Officer did not dispute the same**

In the instant case¹, the assessee is an individual engaged in the business of purchase and sale of agricultural land, plots, etc. She filed her return of income for A.Y. 2012-13. Thereafter, the case was selected under CASS, wherein the Assessing Officer ("AO") made an addition on account of cash payment in violation of section 40A(3) of the Income Tax Act, 1961 ("the Act"). In the said period, the assessee had purchased land and on demand of the sellers made payment in cash amounting to Rs. 12.50 lacs and Rs. 1.33 lacs towards part of sale consideration which was incorporated in sale deed.

Aggrieved, the assessee preferred an appeal before The Commissioner [CIT(A)], who confirmed the order of the AO.

The assessee challenged the case before Hon'ble Income tax Appellate Tribunal (ITAT) and submitted that she made cash payment to the sellers as they have no bank accounts standing to their name as on the date of registration of sale deed and only after the receipt of consideration in part as post dated cheques, the sellers opened the bank accounts.

The assessee also argued that the cash payments were made due to business exigency at the instance of sellers. Further, she argued that both the lower authorities did not dispute the genuineness of the said transaction. In support of the cash payment the sellers, the assessee also filed identity proof and affidavits acknowledging the cash payment with regard to the sale of their land. Further, it was also not disputed that the said cash payment to the share of assessee was not reflected in the sale deed.

The Hon'ble ITAT observed the facts & circumstances of the case :

- a. ITAT Pune (same bench) in the case of *Dhanshree Ispat (supra)* by following the decision of the Hon'ble Supreme Court in the case of *Attar Singh Gurmukh Singh (supra)* deleted the addition made u/s. 40A(3) of the Act by holding when the transaction is genuine no disallowance is warranted.
- b. ITAT Pune (same bench) in the case of *Dnyaneshwar Jagannath Dhamne (supra)* held the disallowance u/s. 40A(3) of the Act is not maintainable if the cash payment is part and parcel of total sale consideration which was not disputed by both the lower authorities.
- c. The Hon'ble High Court of Bombay in the case of *Madhav Govind Dhulshete v. ITO [2018] 99 taxmann.com 56/259 Taxman 149*, held that Rule 6DD was not exhaustive and exceptional or unavoidable circumstances could lead to payments made in cash

Accordingly, the appeal of assessee was allowed.

¹ **Mrs. Monika Chitrasen Patil vs. Income-tax Officer (ITAT Pune Bench) [2023]**

2. Section 12AA :

CIT(E) has no power to look into charitable activities of trust while considering sec. 12AA registration

In the instant case², the assessee-trust filed an application for registration under section 12AA. The Commissioner (Exemption) observed that assessee had a corpus fund and certain amount in fixed deposit and out of accumulated interest certain sum was given as donation, and thus, rejected the assessee's application for registration under section 12AA on grounds that the assessee was not carrying any charitable activities.

The CIT(A) upheld the same and denied registration.

The Hon'ble Tribunal observed the said findings and held that while granting registration to a charitable institutions/trust, if it was at commencement state, powers of Commissioner (Exemption) would be limited to aspect of examining whether or not objects of trust were charitable in nature. However in instant case, the Commissioner (Exemption) had not recorded any finding that object of trust was not charitable in nature. It was noted that no material was brought on record to prove that donations were made with ulterior motives.

In view of aforesaid facts, the Hon'ble High Court held that the Tribunal was right in holding that the Commissioner (Exemption) had not found objects of assessee not charitable and, thus, registration was to be granted under section 12AA.

² **Commissioner of Income-tax (Exemption) vs. Vijay Kumar Bajoria Foundation (High Court of Calcutta) [2023]**

3. Section 263:

No Sec. 263 revision without considering the assessee's evidence submitted during scrutiny to justify Sec. 11 claim

In the instant case³, for the A.Y. 2016-17, the assessee-trust, registered under section 12AA, claimed exemption under section 11 and assessment was completed under section 143(3) after scrutiny. The Ld CIT (Exemption) invoked his revisionary powers under section 263 on the basis that the assessment order passed by the AO was without conducting any enquiry before allowing claim of depreciation. He therefore quashed THE assessment order on the basis that depreciation should not have been allowed as application of trust income for charitable purposes since income accumulated thereafter exceeded 15 per cent of income derived from property held under trust.

It was noted that the assessee had not claimed amount as application of income at time of purchase or during any subsequent period, thus, there was no restriction of claiming depreciation on those assets which have not been included in amount of application of receipts in financial statement. It was further noted that CIT(Exemption) did not adhere to basic requirement to exercise power under section 263 since during course of scrutiny assessment, assessee, in compliance of notice under section 142(1), had furnished details of depreciation claimed before Assessing Officer and thus it could not be said that no enquiry was conducted before allowing claim of depreciation. It was further noted that there had been a consistent claim of depreciation as application income for earlier assessment years and same stood allowed.

³ **Commissioner of Income-tax vs. Dhaneswar Rath Institute of Engineering & Medical Sciences (High Court of Orissa) [2023]**

Therefore, there arose no necessity for Assessing Officer to go further to analyse and examine issue as he was duty bound to follow "rule of consistency". On facts, since the Assessing Officer had made proper, sufficient and adequate enquiry with regard to claim with reference to books of account and the assessee had duly furnished all documentary evidences including claims allowed in earlier years, mere statement that "no documentary evidence is submitted by assessee in support of its claim" could not countenance such categorical findings of fact and thus impugned revisionary proceedings initiated by CIT(E) was liable to be quashed.

4. Section 4:

No additions based on statements of ex-employees & dealers without allowing assessee to cross examine them: ITAT

In the instant case⁴, the assessee-company was engaged in the business of manufacturing of paper and paper products.

For the assessment years 2013-14 to 2017-18, an information was received from the Intelligence Wing of GST that a search and seizure operation was conducted by the excise department upon the assessee-company and also on residence of ex-president of the company along with two other ex-employees. During the search, invoices of goods manufactured and sold by assessee were allegedly recovered from ex-director's house and statements of ex-director's and two ex-employees were also recorded. On the basis of the same, the Assessing Officer concluded that assessee was suppressing its

turnover by way of under-invoicing its sales, thus, there was alleged undisclosed sales and, accordingly, he made additions to income of assessee on the alleged undisclosed sales by way of under invoicing of its sales and, further, made additions to income of the assessee by applying net profit rate of 4.42 per cent.

On appeal, the Commissioner (Appeals) partly allowed appeal of the assessee giving relief in respect of additional net profit by holding average net profit rate at 3.64 per cent instead at 4.42 per cent.

On the assessee's appeal to the Hon'ble Tribunal, it was noted that it was undisputed that during the search proceedings, neither at premises of assessee nor from any other premises, any incriminating evidence with regard to undisclosed sales was found except invoices recovered from residence of ex-president and impugned additions were made solely on basis of same. The Assessing Officer made impugned additions on basis of statements recorded from ex-employees and dealers at back of assessee and without giving assessee opportunity to cross-examine said statements from them. On facts, the impugned additions made to income of assessee on basis of abovesaid material found and statements of ex-employees was unjustified and same was to be deleted.

⁴ **DSG Papers (P.) Ltd. vs. ACIT/Dy.CIT (ITAT Chandigarh) [2023]**