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Tax Digest

- Recent case laws

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New TCS norms shall be implemented from 01st October 2023

The Govt. has extended the deadline for implementing new TCS provisions from 01st July 2023 to 01st October 2023. Thus, the TCS provisions before the Finance Act 2023 shall continue to apply till 30th September 2023. Legislative amendment in this regard shall be made in due course.

1. Cost of Painting & Other Masonry Work After Purchase is to be Considered as Cost of Improvement: ITAT

In the instant case¹, the assessee, a non-resident, sold two immovable properties during the relevant year and filed return of income while claiming exemption under section 54. During the scrutiny proceedings, Assessing Officer (AO) noticed that the assessee claimed the cost of improvement and indexation thereon. Subsequently, AO issued notice to the assessee to prove the genuineness of such claim.

Unsatisfied by the bills produced, the AO disallowed the claim of cost of improvement and added to the assessee's income.

On appeal, CIT(A) upheld the additions made by AO, and the matter reached Chennai Tribunal.

The Tribunal held that the assessee furnished bills for painting grills, gates, and labour masonry & tiles when asked by the AO. Those bills were without date & signature. It is common to paint the building after purchase, provide grills & gates, and do masonry & tiles work.

Accordingly, the Tribunal directed the AO to include the payments along with the cost of improvement and rework out the indexed cost of improvement and allow the same.

2. Section 69C:

No Sec. 69C Additions if AO Failed to Identify Purpose, Date of Payment & Payee Identity: ITAT

In the instant case², a search under section 132 was conducted on the premises of the assessee group. A word document was found on the computer of the accountant, which contained a declaration that the administration manager was carrying cash of Rs. 20 lakhs for purposes of payment for purchases. A statement was recorded under section 132(4), wherein the administrator manager stated that the document pertained to cash delivery to an electrical contractor.

Unsatisfied with the explanation, the Assessing Officer (AO) proceeded to make additions to the income of the assessee under section 69C.

Aggrieved by the order, the assessee filed an appeal to CIT(A). The CIT(A) upheld the AO's order, and the matter reached the Mumbai Tribunal.

The Tribunal held that it was an undisputed fact that the word document found on the computer during the search proceedings mentioned the payment of Rs. 20 lakhs for purchases.

However, the AO could not identify the purpose of payment, the date of making such payment, by whom such payment was authorized and the identity of the person to whom such payment was purportedly made. No evidence was placed on record to corroborate such loose documents and prove that payment was actually made.

In the instant case, the document the department relied upon was not a part of regular books of account but merely a loose document that did not even have a date of such transaction, which are essential features of an authentic document. No doubt it is a computer document, so there is no

¹ **Mohamed Ibrahim v. Income-tax Officer (International Taxation) - [2023] (Chennai-Trib.)**

² **Aurum Platz (P.) Ltd. v. Deputy Commissioner of Income Tax - [2023] (Mumbai-Trib.)**

question of any signature or handwriting, but the same also needs to be corroborated.

Accordingly, AO was directed to delete the addition made under section 69C.

3. Creditworthiness of Investor could not have been Doubted if he Remitted Amount Lower than his Net Income: HC

In the instant case³, a search under section 132 was conducted on the premises of a Group. The authorities noticed that huge amounts were introduced as loans from various companies, and the assessee was also one such company. Consequently, a notice under section 148 for reassessment was issued to the assessee. Upon receipt of the notice, the assessee filed its returns. It was called upon to prove the genuineness of transactions with regard to investments along with relevant documentary evidence.

The Assessing Officer (AO) held that the assessee had not furnished any documentary evidence to prove the creditworthiness of the remitter (a shareholder) as he had declared a huge loss for the earlier years. Accordingly, the sum shown as receipt by the assessee towards the investment of shares was brought to tax as unexplained credit under section 68.

On appeal, the CIT(A) deleted the additions. Such deletion was further confirmed by the Tribunal. The matter then reached Karnataka High Court.

The High Court that AO's case was that the investor had suffered loss during 2003, 2004 and 2006, and therefore, the assessee's claim with regard to his investment in the company was doubtful. The ITAT noted that even after suffering losses in 2003, 2004

and 2006, the investor had a net income of USD 33 lakhs and remittance of only USD 10 lakhs.

Further, evidence in the form of bank accounts was also furnished in support of the investment made by the investor. The entries were available in the bank documents of Foreign Bank accounts, and transactions were in the nature of inter-bank transfers. Thus, there was no ground to draw any contrary interference.

4. Bombay HC Allows Capital Gain Exemption to Singapore-based FII

In the instant case⁴, the assessee, a tax resident of Singapore, registered as a Foreign Institutional Investor (FII) in the debt segment with the Securities and Exchange Board of India (SEBI). During the year under consideration, the assessee declared capital gains on the sale of debt instruments and claimed exemption under Article 13(4) of the India-Singapore Double Taxation Avoidance Agreement (DTAA).

During the assessment proceedings, the Assessing Officer (AO) invoked Article 24, contending that though the provisions of Article 13(4) allow exemption of capital gains in the source country, i.e., India, provisions of Article 24 of DTAA provides for restriction of exemption of such capital gains to the extent of repatriation of such income to other country, i.e., Singapore.

In response, the assessee furnished a certificate from Singapore Authorities confirming the assessee's taxation in Singapore. Unsatisfied, AO made additions to the assessee's income by denying the exemption.

³ Principal Commissioner of Income-tax v. Jaico Realtors (P.) Ltd. - [2023] (Karnataka)

⁴ Commissioner of Income-tax Vs. Citicorp Investment Bank - [2023] (Bombay)

The Dispute Resolution Panel (DRP) upheld the AO's order which the Mumbai Tribunal reversed. Accordingly, an appeal was filed by the AO before the Bombay High Court.

The High Court held the assessee would come under Article 13(4) of DTAA, which says gains from the alienation of any property (debt instrument in this case) shall be taxable only in Singapore, of which the alienator (the assessee) is a resident. Thus, the entire capital gain shall be taxed in Singapore.

Applying Article 24, if income from sources in India is exempted from or taxed at a reduced rate in India, and if under Singapore's current laws, the capital gain is taxed based on the remitted or received amount in Singapore rather than the full amount, then the tax exemption or reduction of tax allowed under DTAA in India will apply only to the portion of income that is remitted to or received in Singapore.

When under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case, Article 24(1) would not apply.

In the instant case, Singapore authorities have themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. Such certificates issued by the Singapore Tax Authorities will constitute sufficient evidence for accepting the legal position.

Therefore, the entire capital gain shall be taxed in Singapore as per Article 13 without invoking Article 24 of the Tax Treaty.