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Tax Digest

- Recent case laws

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NEWS FEED

E-filing of Updated ITR u/s 139(8A) has also been enabled for ITR 2 & 3 for AY 2020-21 and AY 2021-22 using Excel utility.

Direct Tax Updates

1. COA of debentures allotted in consideration of dividend to be the sum on which Co. paid DDT : ITAT

CoA of 'bonus debentures' is not Nil, but the amount treated as deemed dividend u/s 2(22)(b) on which DDT was paid

In the instant case[1], the assessee was a non-resident company engaged in the business as a foreign portfolio investor. The assessee was also a shareholder in Blue Dart Express Ltd. During the course of scrutiny assessment proceedings, it was noticed that the assessee was allotted 1,38,558 debentures of Blue Dart Express Ltd. in respect of which has claimed cost of acquisition of Rs. 13,85,580/-. When the assessee was asked to justify this cost of acquisition, it was explained by the assessee that the consideration for acquiring these debentures was dividend of Rs. 13,85,580/-. The Assessing Officer, however, declined this claim. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. The learned CIT(A) confirmed the stand of the Assessing Officer and dismissed the appeal.

The assessee, aggrieved, submitted that since the dividend amount was reinvested and issued in the form of bonus debentures, it actually represented the cost of acquisition of these debentures. Accordingly, the face value of the debentures, i.e. the amount of dividend subject to DDT i.e. IN 13,85,580, had been considered as the cost of acquisition of the bonus debentures allotted to the Appellant, for the purpose of computing capital gains on the sale of these debentures. Where the dividend amount is not deducted as cost of acquisition the same will lead to taxation of the same income (i.e. dividend) twice i.e. once as dividend and then as capital gains.

The Hon'ble ITAT placed reliance on a decision of the Supreme Court in the case of *Commissioner of Income-tax v Narasimhan (236 ITR 327)*. In the said case the share capital of the company was reduced by a scheme of capital reduction and the difference between the face values was paid to the shareholders. The Supreme Court held that as per section 2(22)(d) of the Act, the payment which represented accumulated profits should be regarded as dividend and taxed accordingly. The balance amounts (representing the pro-rata distribution of assets) should be treated as a capital receipt. It further held that in order to compute capital gains, if any, in the hands of the shareholder, the portion attributable towards accumulated profits (dividend) should not be considered and the balance amount, if any should be taken into account while computing capital gains, if any.

Given the above ruling, since the bonus debentures allotted by BDEL is regarded as 'deemed dividend' and taxed accordingly, it should be excluded while computing capital gains, if any, at the time of sale of such debentures. Further, unless the amount considered for the purpose of DDT is reduced from the capital gain earned on the sale of such debentures, the same will lead to taxation of the same income twice i.e. once as dividend and then as capital gains, which could never have been the intention of the legislature. Hence, the appeal of the assessee was allowed.

2. TDS credit to be allowed when assessee offered income to tax even if payer deducted tax on income in next FY: ITAT

[1] **JP Morgan Funds Vs. DCIT (ITAT Bombay) [2022]**

Where assessee-company had offered to tax relevant income out of which TDS was deducted in assessment year 2017-18, credit of TDS was to be allowed during assessment year 2017-18 in accordance with mandate of section 199 read with rule 37BA, even though payers had deducted TDS in financial year relevant to assessment year 2018-19

In the instant case[2], the assessee-company filed its return of income, which was processed through intimation under section 143(1). It had claimed credit for TDS on ground that although the payers had deducted TDS in the financial year relevant to the assessment year 2018-19 but the relevant income was offered in the assessment year 2017-18 as per regular method of accounting.

The Assessing Officer agreed with the submission that the credit of TDS was required to be allowed in accordance with section 199, however, left the issue to the wisdom of the bench.

On the assessee's appeal to the Tribunal, it was observed that the assessee had rightly pressed section 199. The sub-section (3) of the said section 199 empowered the Board to make rules and exercising that authority, the Board had made rule 37BA which made it unambiguously clear that the credit of TDS shall be allowed in the year in which the relevant income is taxable. The relevant income out of which the TDS was deducted had been offered by the assessee for taxation in the assessment year 2017-18 according to the regularly followed method of accounting. Hence, the credit of TDS deserves to be allowed in the assessment year 2017-18 in accordance with the mandate of section 199 read with rule 37BA.

Hence, the case was sent back to the AO to verify the figures of relevant income and TDS supplied by the assessee and whether the assessee has actually offered the relevant income in the assessment year 2017-18 or not. In conclusion, the appeal was partly allowed.

3. HC set-asides ITAT's order granting registration merely referring trust's objects without verifying requisite docs

Where Tribunal without properly examining activities carried on by assessee-trust and utilisation of surplus funds received by it, merely in light of documents furnished by assessee and by merely referring to objects of assessee-trust opined that purpose of assessee-trust was education, and, thus, it was eligible to be granted registration under section 12AA, such order of Tribunal without proper verification was to be set aside and matter was to be remanded for fresh consideration

In the instant case[3], according to the appellant/Revenue, originally, the respondent filed an application on 22-6-2009 for grant of registration under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), which was rejected by the Commissioner of Income-tax, Madurai, by order in C.No.464/53/CIT-1/2009-10 dated 1-12-2009. Challenging the said order, the respondent filed an appeal before the ITAT, Chennai, which by order dated 30-9-2010, set aside the said order and remanded the matter to the CIT for fresh consideration. Pursuant to the said order of the ITAT, the Commissioner of Income-tax, Madurai, reconsidered the application of the

[2] **Shivganga Drillers (P.) Ltd. Vs. CPC, Income-tax, Bangalore (Indore - Trib.) [2022]**

[3] **CIT Vs. Shri Venkatachalapathy Education and Charitable Trust (High Court of Madras) [2022]**

respondent seeking registration under section 12AA of the Act and ultimately, rejected the same, on the ground that there was no satisfactory materials produced by the respondent. Aggrieved by the said order of the CIT, the respondent went on further appeal before the ITAT, Chennai. The Tribunal upon consideration of the submissions made on both sides, allowed the said appeal filed by the respondent and thereby directed the appellant to grant registration under section 12AA of the Act to the respondent, by order dated 23-6-2011, which is impugned in this appeal.

The Hon'ble Court placed reliance on the decision of the Hon'ble Supreme Court in *Queen's Educational Society v. CIT,* in which, after having discussed several decisions of various High Courts, it was held that "the correct tests would apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit; the assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down; the activities of such institutions be looked at carefully and if they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn". It could be seen from the order impugned herein that without properly examining the activities carrying on by the respondent trust and utilisation of the surplus funds received by them, in the light of the documents furnished, the ITAT, Chennai, merely referring to the objects of the respondent trust, opined that the purpose of the respondent trust was nothing but education; construction of infrastructure for pursuing educational activity is also by its very nature a necessary expenditure for effectively pursuing the educational objects; and the Act itself contemplates exemption to income of institution imparting education.

Hence, the Hon'ble Court held that the order of the Tribunal be set aside, and remanded back to it for fresh consideration.

4. Response submitted on next working day to be considered if time-limit to file response expired on a public holiday: HC

Where time-limit for filing reply in response to show cause notice issued to assessee under section 148A(b) for reopening assessment expired on 18-3-2022 which was a public holiday and following two days, 19-3-2022 and 20-3-2022 were Saturday and Sunday, assessee having filed its reply on 21-3-2022, order passed under section 148A(d) without considering assessee's response was to be set aside and matter was to be remanded back to revenue for considering assessee's reply

In the instant case[4], the appellant had filed the writ petition challenging the order dated 23rd March, 2020 passed under Section 148A(d) of the Income Tax Act, 1961. The learned Single Judge was of the view that the appellant did not file their objection to the notice issued under Section 148A(b) of the Act within the time permitted and, therefore, the Court was not inclined to interfere with the order dated 23rd March, 2022. The correctness of the order passed in the writ petition is challenged before the Court.

[4] **R N Fashion Vs Union of India (High Court of Calcutta) [2022]**

The facts in brief are:

The appellant was issued notice under Section 148A(b) of the Act calling upon them to show cause as to why action should be initiated for reopening the assessing by invoking the power under Section 184A of the Act. The notice stipulated that the reply be submitted by the appellant not later than 18th March, 2022. The appellant bad uploaded their reply/response on 21st March, 2022. This cannot be disputed by the Department as the screen shot has been provided in page 71 of the memorandum of appeal. The ITO proceeded to pass the order dated 23rd March, 2022 stating that the assessee did not file any response within the stipulated time and, therefore, concluded that the assessee has nothing to submit in their response. Admittedly, 18th March, 2022 was a public holiday on account of the Holi festival. It is not clear as to whether the concerned ITO had attended office or he was enjoying the holiday. In any event, a purposive interpretation needs to be given to the statutory provision. The opportunity provided under clause (b) of Section 184A of the Act should be a meaningful opportunity. The statute provides for granting time to submit reply within seven days, but not exceeding 30 days from the date on which the notice is issued. Thus, a reasonable view ought to have been taken by the ITO in the instant case as admittedly the reply cannot be submitted on 18th March, 2022 if it was required to be submitted in physical form because the Income Tax Department was closed on account of a public holiday. Therefore, the interpretation given by the ITO is a thoroughly narrow interpretation and a perverse outlook.

It was argued on behalf of the respondent that had the assessee made a request for extension of time as provided in clause (b) of Section 148A, then in all probabilities, there could have been a chance for grant of extension of time. However, the assessee did not make any such request. This argument also has to fail for the simple reason that it is on record that the reply/objection had been filed online on 21st March, 2022 and if that is the factual position, it is deemed that the assessee had sought for extension of time.

Consequently, the order passed in the writ petition was set aside and the writ appeal was allowed and the order dated 23rd March, 2022 as well as the notice issued under Section 148 of the Act dated 11th March, 2022 were quashed.