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Direct Tax Newsletter

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CBDT Amends Notification Exempting NRs from ITR Filing Incorporating Amended Definition of 'Investment Fund'

The Central Board of Direct Taxes (CBDT) vide Notification No. 55/2019, dated 26-07-2019, granted exemption from filing Income Tax Returns (ITR) to non-resident individuals (including foreign companies) who earned income from investments in an investment fund established within an International Financial Services Centre (IFSC) situated in India.

1. AO Couldn't Disallow Medical Camp Expenses Merely Relying Upon Statement of Office Bearer

In the instant case¹, the assessee was a hospital, engaged in charitable activities of providing medicines and medical aid to needy and poor people. It had set up a medical camp in flood affected area for providing free medicines to needy and flood affected people. Assessing Officer (AO) had doubted genuineness of expenditure incurred by the assessee on free distribution of medicines to patients and other social organizations during the flood situation and disallowed application of income for charitable purpose.

On appeal, the Tribunal allowed application of income by the assessee on account of free distribution of medicine. The matter reached before the High Court.

The High Court held that it was not in dispute that the assessee, engaged in charitable activities of providing free medicines, medical aid and treatment to the needy and poor, operating hospital and conducting medical campaigns. These activities of the assessee were never doubted by the Income-tax department in the year under consideration or in the previous or succeeding years.

The documents in the nature of photographs produced before the Tribunal were also examined and it was found that the medical camp was conducted by the assessee to cater to the poor and affected people of the concerned area.

Tribunal had seen that requests were received by the assessee from various social organizations for giving free medicines so that the same could be distributed to the people affected by the floods.

Purchase of medicines were verified by AO by issuing notice under section 133(6) to various suppliers who are confirmed to have supplied medicines to the assessee.

AO solely relied upon a statement recorded from an office bearer of the social organization, disallowed the expenses incurred by the assessee for supplying free medicines to social organizations.

Further, assessee was not provided the opportunity to cross-examine despite specific request made by the assessee, requesting that they may be permitted to cross-examine the office bearer of the social organization.

Thus, ITAT was justified in allowing application of income on account of free distribution of medicines in medical camp by assessee.

2. Section 54B:

Benefit of Sec. 54B Couldn't be Denied if Same was Allowed by AO to Co-owner: ITAT

In the instant case², the assessee-individual sold agricultural land during the relevant assessment year and filed the return of income by claiming exemption under section 54B. Subsequently, the Principal Commissioner (PCIT) exercised its jurisdictional power under section 263. It was observed that the land sold was non-agricultural since said land was converted from agricultural to non-agricultural by the then-owner.

Assessee contended that the then owner had applied for conversion of only that part of land sold to another entity, and the remaining part not applied for conversion was purchased by the assessee and other co-owners. Unsatisfied with the explanation, it was concluded that the Assessing

1 CIT (Exemption) v. Anandalok - [2023] (Calcutta)

2 Bhikhabhai Rajabhai Dhameliya v. PCIT [2023] (Surat-Trib.)

Officer (AO) had erred in not disallowing the deduction under section 54B.

Aggrieved by the order, the assessee preferred an appeal to the Surat Tribunal.

The Tribunal held that from the sale deed, it is clear that the then-owner, along with other lands he owned, applied for seeking permission for non-agriculture usage of certain areas. It means that prior to seeking permission for non-agriculture usage, these lands were used for agricultural purposes.

Further, concerning one of the co-owners, the order issued by the PCIT under section 263 had an appeal effect. AO recognized this appeal effect through an order passed under section 143(3) in conjunction with section 263. In this order, the AO granted a deduction under section 54B.

Therefore, when the Department accepted the claim of deduction under section 54B, in the case of one co-owner, then in that situation, the other co-owners of the same land should not be treated differently. Hence, other co-owners should also be allowed deduction under section 54B.

3. No Concealment Penalty if Assessee Corrected Mistake Before Assessment Order was Passed: HC

In the instant case³, the assessee-company claimed foreign exchange fluctuation loss under the head finance charges of the profit and loss account. During the scrutiny proceedings, the Assessing Officer (AO) contended that as per section 43A, the foreign exchange fluctuation loss was to be allowed on payment basis and adjusted from the corresponding cost of the relevant plant and machinery.

Accordingly, he disallowed foreign exchange fluctuation loss and added back to the assessee's income.

The assessee admitted that due to bona fide error, it wrongly claimed foreign exchange rate difference as an expense that the AO disallowed and accepted by the assessee. Further, on the discovery of mistake during assessment proceedings, it voluntarily surrendered the amount as per documents placed on record and not even disputed it in the regular appeal.

Despite this, AO disallowed depreciation on account of an increase in the cost of plant & machinery by the amount of foreign exchange fluctuation and also levied penalty under section 271(1)(c) on account of wrong claim or incorrect computation.

On appeal, the CIT(A) allowed the depreciation claim and deleted the penalty. The Tribunal further confirmed the order of CIT(A). The matter reached the Delhi High Court.

The High Court held that the record shows that the assessee could not have claimed the loss on account of foreign currency as deductible expenditure in view of the provisions of section 43A. It appears that this aspect emerged during scrutiny.

The assessee accepted this position, without demur, even before the assessment order was passed and claimed depreciation on the increased cost of plant and machinery, qua which foreign currency fluctuation loss had been incurred.

Further, the assessee had preferred the appeal with the CIT (A) only vis-a-vis that aspect of the assessment order whereby the AO had not granted depreciation. While dealing with the penalty order passed by the Commissioner, there was no advantage to the assessee in claiming foreign

³ **PCIT v. National Textiles Corporation Ltd. - [2023] (Delhi)**

currency fluctuation loss as deductible expenditure, given that it had unobserved losses of approximately Rs. 12,000 crores.

Clearly, the assessee could not have gained anything by claiming foreign currency fluctuation loss as deductible expenditure, as it would have only added to the existing burgeoning losses. The assessee's action would not call for the imposition of penalty, as once the AO pointed out the error, the assessee made a course correction before the assessment order was passed.

Accordingly, the revenue's appeal was dismissed, and the order of the lower authorities were confirmed.

4. No Additions Relying Upon Statements of Transporters Without Providing Opportunity to Cross-examine: HC

In the instant case⁴, the assessee was carrying on the business of commission agent for a company which included transportation of its products all over the country. It had shown a certain amount as outstanding to be paid to four transporters whose vehicles were utilized by it during the assessment year. In support of such credits, it furnished confirmation letters from the transporters and produced some vouchers and TDS certificates.

Assessing Officer (AO) took the view that the amount shown as outstanding to transporters was not genuine and added the same to the assessee's income.

On appeal, CIT(A) confirmed AO's order which the Tribunal further upheld. The matter then reached Telangana High Court.

The High Court held that the AO had relied upon statements made by the transporters adverse to the assessee, which were not furnished to the assessee. It is the settled proposition of law that before income tax authorities can use a document submitted by a person to an income tax officer, they have a legal obligation to present it to the taxpayer. This allows the taxpayer to challenge the information in the document by requesting an opportunity to question the person who made the statements in the document.

Furthermore, it is also a settled proposition of law that if the adjudicating authority denies the taxpayer the opportunity to cross-examine witnesses, even though the statements of those witnesses formed the basis of the disputed order, it constitutes a significant flaw. This flaw renders the order null and void, violating the fundamental principles of natural justice.

Therefore, the assessee should have been allowed to rebut the same by cross-examining the deponent to extract the truth. Failure to provide such an opportunity amounted to a violation of the principles of natural justice, which vitiated the order of the AO.

⁴ **Sree Trading Corporation v. ITO - [2023] (Telangana)**