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Tax Digest

- Recent case laws

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NEWS FEED

CBDT amends Income-tax Rules as per the new tax regime; notifies Rule 21AGA and Form 10-IEA to opt for the old tax regime

The Finance Act 2023 amended provisions of Section 115BAC to provide the reduced tax rates under the new tax scheme for the assessment year 2024-25 and onwards. The new tax scheme is made the default scheme for taxpayers, and its scope also extended to the Association of Persons (AOP), Body of Individuals (BOI) and Artificial Juridical Person (AJP). The Central Board of Direct Taxes (CBDT) has notified Income-tax (Tenth Amendment) Rules, 2023 to implement consequential changes. This amendment rule modifies the existing Rules 2BB, 3, and 5 and introduces a new Rule 21AGA.

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Direct Tax Updates

1. SC dismissed review petition on taxability of assets revaluation amount credited to partners' capital account

In the instant case[1], the assessee-partnership firm reconstituted the partnership firm and new partners were admitted. Later, the assets of the firm were revalued and revaluation amounts were credited to accounts of the partners in their profit sharing ratio. Furthermore, two of the existing partners withdrew part of their capital and new partners were immediately benefitted by the credit to their capital accounts of the revaluation amount which was greater than their contribution amount.

The Assessing Officer issued reopening notice on grounds that the assessee enhanced the value of assets by revaluing the land and building, and subsequent crediting of the enhanced revalued amount to the respective partners' capital accounts would constitute transfer. He, thus, passed reassessment order holding that said amount would be liable to be taxed under section 45(4) and accordingly, made addition towards short-term capital gains.

On appeal, the Commissioner upheld the additions made by the Assessing Officer on grounds that value of the assets of the firm which commonly belonged to all the partners of the partnership have been irrevocably transferred in their profit-sharing ratio to each partner and to that extent, the partnership had effectively relinquished its interest in the assets and such relinquishment could only be termed as transfer by relinquishment therefore, according, conditions of section 45(4) were satisfied and therefore the assets to the extent of their value distributed would be deemed as income by capital gains in the hands of the assessee firm.

On second appeal, the Tribunal set aside additions made by the Assessing Officer on ground that revaluation of the assets and crediting to partner's account would not involve any transfer.

On revenue's appeal, the High Court affirmed the order of the Tribunal:

On appeal to the Supreme Court:

The object and purpose of introduction of section 45(4) was to pluck the loophole by insertion of section 45(4) and omission of section 2(47)(ii). While introduction to section 45(4), clause (ii) of section 2(47) came to be omitted. Earlier, omission of clause (ii) of section 2(47) and section 47(ii) exempted the transform by way of distribution of capital assets from the ambit of the definition of "transfer". The same helped the assessee in avoiding the levy of capital gains tax by revaluing the assets and then transferring and distributing the same at the time of dissolution. The said loophole came to be plucked by insertion of section 45(4) and omission of section 2(47)(ii). At this stage, it is required to be noted that the word used "OR OTHERWISE" in section 45(4) is very important.

In the instant case, it was the case on behalf of the assessee that unless there is a dissolution of partnership firm and thereby the transfer of the amount on revaluation to the capital accounts of the respective partners, section 45(4) shall not be applicable. It is the case on behalf of the assessee that there can be no income just due to revaluation of the capital assets unless capital assets is also transferred. According to the assessee, the amount credited on revaluation to the capital accounts of the partners is only notional or book entry, which is not represented by any additional tangible assets or

[1] **Mansukh Dyeing and Printing Mills v. CIT [2023] (Supreme Court of India)**

income. Therefore, the sum and substance of the submission on behalf of the assessee is that unless there is a dissolution of the partnership firm, and there is only transfer of the amount on revaluation to the capital accounts of the respective partners. Section 45(4) shall not be applicable. However, in view of the amended section 45(4) inserted vide Finance Act, 1987, by which, "OR OTHERWISE" is specifically added, the aforesaid submission on behalf of the assessee has no substance. The Bombay High Court in the case of CIT v. A.N. Naik Associates [2004] 136 Taxman 107/265 ITR 346 had an occasion to elaborately consider the word "OTHERWISE" used in section 45(4). After detailed analysis of section 45(4), it is observed and held that the word "OTHERWISE" used in section 45(4) takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favour of a retiring partner. In the instant case, the assets of the partnership firm were revalued to increase the value on 1-1-1993 (relevant to assessment year 1993-94) and the revalued amount was credited to the accounts of the partners in their profit-sharing ratio and the credit of the assets' revaluation amount to the capital accounts of the partners can be said to be in effect distribution of the assets to the partners and that during the years, some new partners came to be inducted by introduction of small amounts of capital and the said newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which amount was available to the partners for withdrawal and in fact some of the partners withdrew the amount credited in their capital accounts. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners can be said to be "transfer" and which fall in the category of "OTHERWISE" and therefore, the provision of section 45(4) inserted by Finance Act, 1987 with effect from 1-4-1988 shall be applicable. In view of the above and for the reasons stated, the impugned judgment and order passed by the High Court and that of the Tribunal are unsustainable and the same deserves to be quashed and set aside and are accordingly quashed and set aside. The order passed by the Assessing Officer is hereby restored.

2. Section 12A:

Sec. 12A registration couldn't be granted to trust established for purpose of particular sub-caste: ITAT

In the instant case[2], the assessee-trust constituted by a trust deed filed an application for grant of registration under section 12AA The Commissioner having noticed that the trust existed solely for a particular sect of Hindu religion and certain clauses in the trust deed were on caste lines which were opposed to the public policy of the Government issued on the assessee a show cause notice as to why the trust should not be treated as private religious trust and after considering the assessee's explanation opined that as per the provisions of section 11 the beneficiaries of the trust must be public at large and accordingly private religious trust were not entitled for exemption of income. Thus he rejected the application for registration.

In order to get registration under section 12AA the assessee-trust has to establish that it is a public religious trust. The assessee-trust existed for the purpose of Poruleentha Kula Vellala Gounder, which is a sub sect of Vellala Gounder community. Therefore, once the assessee-trust is established for the purpose of particular sub-caste, it is only for the

[2] **Arulmigu Aathi Karumapuram Sellandiamman Kudipaattukarakal Seva Trust v. CIT(E) [2023] (ITAT Chennai)**

benefit of that sub-caste and thus it is a private religious trust. With regard to the argument of the assessee that it was doing service to six other temples, namely, Vinayagar temple, Mariamman temple, Athanoor Amman, Periaamman, Perumal temple and Easwaran temple, the Commissioner deputed Inspector to make field enquiry and the field enquiry made by the Inspector as well as reply received from the Assistant Commissioner, Hindu Religious & Charitable Endowments Department, Namakkal reveal that six temples are under the control of the Hindu Religious and Charitable Endowments Department, Tamil Nadu and they are fully maintained by the Government of Tamil Nadu. Therefore, the argument of the assessee that it was doing services to other six temples and they are open to public at large cannot be accepted.

Moreover the assessee-trust has been established exclusively to serve to a particular sub sect of Vellala Gounder community. Further the assessee-trust does not come under the purview of charitable trust or under the purview of public religious trust. It is only a private religious trust.

It was the argument of the assessee that its activities are to receive contribution from the members and not from any outsider and the expenditure is only to manage and protect the temple. So far as the argument is concerned, if the assessee is running on the basis of mutuality, it can carry its activities and nobody will object. So far as another argument of the assessee that its receipts do not come within the definition of income under section 2(24) is concerned, the assessee cannot decide itself that its receipts cannot come within the purview of the Income-tax Act. The income has to be determined depending upon the receipt, what are the expenditure incurred, what is the source of income and it has to be decided after considering entire details. It cannot be pre-determined by the assessee that the receipts derived by it cannot be an income within the meaning of section 2(24). So far as violation of article 14 and article 19(c) of the Constitution of India is concerned, article 14 as well as article 19(c) have no application to the facts of the instant case. In the instant case whether the assessee is entitled for grant of registration under section 12AA or not has to be determined a per the conditions stipulated under the Income-tax Act. The above mentioned two articles nowhere correlated to grant of registration under section 12AA. Another argument of the assessee that neither the State Government nor the Central Government prohibit forming a trust or association and it is not the policy of either of the Government. It is open to the assessee to form a trust or association. However, if the assessee wanted grant of registration under section 12AA, it has to satisfy certain conditions stipulated under the Income-tax Act. The assessee has failed to satisfy the conditions as required under section 12AA for grant registration as a public religious trust for the reason that it existed only for the benefit of a particular sub sect and not general public at large.

In the result no registration under section 12AA can be granted to the assessee being a private religious trust.

3. Where assessee-company had not clearly mentioned leasing out as one of objects of its business in its memorandum of association (MOA), lease rental income earned by assessee was chargeable under head 'Income from house property'

In the instant case[3], The assessee was a private limited company incorporated in the business of real estate. It raised funds and purchased a

[3] **Highend Properties (P.) Ltd. v. DCIT [2023] (ITAT Hyderabad)**

commercial property. The assessee let out this property and initially offered the said income of lease rentals under the head 'Income from house property' (IFHP), but realized that there was a mistake, thus, he took the plea before the Commissioner (Appeals) to the effect that the income from the lease rentals was taxable under the head 'profits and gains from business or profession' (PGBP). The Commissioner (Appeals), however, held that leasing was not mentioned as object in the Memorandum of Association (MoA) of the assessee. He held that deriving rental income was not a part of the business of the assessee and, further, the assessee did not commence its business as per its objects under MoA.

In instant appeal to the Tribunal, the assessee contended that the lease rentals derived by the assessee from the property should be taxed as 'profits and gains from business or profession' There is no reference to the activity of letting out the property by the assessee is one of the objects. What all that is stated is that the assessee can acquire the property on lease, hire or otherwise. According to the assessee, this leasing activity by the assessee is covered by the expression 'working in same'. It is difficult to agree with such a contention, Words have to be understood in the context of the other words in their company. When once acquiring by lease is a specific, in the same way letting out should also have been specifically mentioned. The assessee is aware of the activity of lease or hire, because that is specifically mentioned to have been included in the process of acquisition. In such situation, it is difficult to read something that is not to be found in the objects of the assessee and which cannot be inferred from the language employed therein. It is not for the courts to give meaning to an expression, which in fact was not intended by the parties.

Therefore, leasing out the property is not one of the objects of the business of assessee as could be culled out from the Memorandum of Association. Accordingly, the Commissioner (Appeals) is right in rejecting the contention of the assessee and maintaining the chargeability of rental income under the head 'Income from house property'.

Further, regarding the commencement of business, there is no dispute that the assessee is a private limited company and was incorporated on 8-6-2006. Unlike a limited company, a private limited company is not required to obtain the certificate for commencement of business. A private limited company can start the business immediately after incorporation. Immediately after incorporation, the assessee had carried out several operations like raising loans and acquiring business assets and in that process an asset was acquired and an advance amount for acquiring another asset was made. These transactions are part of the business of the assessee and there is no requirement of obtaining any commencement certificate in this case. Apart from this, the assessee incurred expenditure relating to printing and stationery, audit fee, filing fee, miscellaneous expenses etc., which according to the Assessing Officer are not specifically related to the business. Assessing Officer further held that the income from house property cannot be equated to business income. However, in commencement of business the assessee purchased the property and the rent is a by-product. Therefore, the contention of the assessee that they have commenced their business is accepted.

4. Section 54B:

No sec. 54B benefit if agricultural land is purchased in name of any third person, including spouse: ITAT

In the instant case[4], during the year under consideration, assessee had sold urban agricultural land and earned long-term capital gains. He had invested such LTCG in the purchase of another agricultural land but in the name of his wife and claimed exemption under section 54B.

The Assessing Officer had refused to allow the claim for exemption relying upon the decision of Punjab & Haryana High Court in CIT v. Dinesh Verma [2015] 60 taxmann.com 461/233 Taxman 409, wherein it was held that if the subsequent property is purchased by a person other than the assessee, including his close relative, even his wife and children, the assessee would not be entitled to the benefit conferred by the provisions of section 54B. CIT(A) had also confirmed the order passed by AO and dismissed the assessee's appeal. On further appeal before the Tribunal:

In Kamal Kant Kamboj v. ITO [2017] 88 taxmann.com 544/397 ITR 240 (Punjab & Haryana), relying on its earlier decisions in Dinesh Verma (supra) and Jai Narain v. ITO [2008] 306 ITR 335/(Punj. & Har.), the Hon'ble jurisdictional High Court has held that as held in Jai Narain's case, section 54B of the Income-tax Act nowhere suggests that the legislature intended to advance the benefit of the said section to an assessee who purchases agricultural land in the name of a third person; that the term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset has to be in the name of the assessee himself; that therefore, purchase of agricultural land by the assessee in the name of his son or grandson, etc., does not qualify for exemption u/s 54B; that in interpreting the words contained in a statute, the Court has not only to look at the words, but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances; that the word "assessee" occurring in section 54B must be interpreted in such a manner as to accord with the context and subject of its usage; that wherever the legislature intended to advance the benefit of a section to an assessee, it had specifically provided so under the concerned provision; that as held in Dinesh Verma (supra), in the case of purchase of agricultural land in the name of the wife of the assessee, the relief u/s 54B would not be allowed; that in the case of CIT v. Gurnam Singh[2008] 170 Taxman 160/[2010] 327 ITR 278 (Punjab & Haryana), the assessee, out of the sale proceeds of the agricultural land sold by him, had purchased some other piece of land in his name and in the name of his only son who was bachelor and depending upon him, for being used for agricultural purposes within the stipulated period; that the pure finding of fact had been recorded by the Tribunal that merely because in the Sale Deed, his only son was also shown as co-owner, it did not make any difference because the purchased land was being used by the assessee for agricultural purposes; that thus, on the basis of the finding recorded by the Tribunal, it had been concluded by the High Court that no substantial question of law arose, and the appeal had been dismissed; that in the case at hand, however, the land had been purchased by the assessee in the name of his wife only; that in the case of CIT v. Kamal Wahal [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 (Delhi), it had been held that for the purpose of claiming deduction u/s 54F of the Act, the new residential house need not be purchased by the assessee in his own name, nor is it necessary that it should be purchased

[4] **Surta Ram v. Income tax Officer [2023] (ITAT Chandigarh)**

exclusively in his name; that a purposive construction is to be preferred as against a literal construction; that in view of the binding precedents of the Punjab & Haryana High Court in the cases of Jai Narain (supra) and Dinesh Verma (supra), the said view in Kamal Wahal was not being subscribed to; that similar was the position in the case of CIT v. V. Natarajan [2006] 154 Taxman 399/287 ITR 271 (Mad.), that therein the decision in Jai Narain's case (supra), had not been accepted; that the opinion in DIT v. Mrs. Jennifer Bhide [2011] 15 taxmann.com 82 (Kar.), being contrary to the decisions of the Punjab & Haryana High Court in the cases of Jai Narain (supra) and Dinesh Verma (supra), the assessee could not derive any advantage therefrom; that in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC), the decision of the Court is to read the section, understand its language and give effect to the same; that if the language is plain, the fact that the significance of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision; that it is for the legislature to step in and remove the absurdity; that on the one hand, if two reasonable constructions of a taxing provision are possible, then the construction which favours the assessee must be adopted; that there is no quarrel with this proposition; that that was a case in respect of section 271(1)(a)(i) and the principle of law enunciated therein is well recognized; that however, the situation in the case at hand being different, the assessee could not derive any advantage from the said decision; that in the case at hand, exemption u/s 54B was not allowed to the assessee on the ground that the land was not purchased by the assessee in his own name; that the CIT(A) as well as the Tribunal, both dismissed the appeals filed by the assessee and that since the issue stood already concluded against the assessee by the Punjab & Haryana High Court in Jai Narain's case (supra) and the Tribunal had also followed the said judgment, the applicability of the said decision did not stand controverted, nor had any error been shown in the finding recorded by the Tribunal.

It is seen that the case of the present assessee is squarely covered by the decision of the jurisdictional High Court of Punjab & Haryana in Kamal Kant Kamboj (supra). No later decision contrary to Kamal Kant Kamboj rendered by the Punjab & Haryana High Court or by the Supreme Court has been cited before us. Kamal Kant Kamboj (supra), itself has also not been shown to have been over-turned, or even stayed. CIT v. Podar Cement (P.) Ltd. [1997] 92 Taxman 541/226 ITR 625 (SC) relied on by the assessee does not lay down any law to the contrary. All the other decisions on which reliance has been placed by the assessee, cannot be of any use to the assessee in the light of Kamal Kant Kamboj (supra), which is a decision rendered by the Hon'ble jurisdictional High Court qua the assessee.
In view of the above discussion, there is no error whatsoever in the order passed by the CIT(A). The same is, thus, hereby confirmed.