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Direct Tax Newsletter

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CBDT Notifies SOP for Making Application for Recomputation of Income of Co-operative Society u/s 155

CBDT Issues Clarifications on Certain Funds for FACTA & CRS Reporting

1. ITAT Remands AO's Disallowance of Additional Depreciation on 160MW Solar Power Plant Due to Office Usage

In the instant case[1], the assessee-company had two manufacturing units/factories at 'Bikaner' and 'Manesar'. During the year under consideration, two Solar Power Plants were installed at the respective factories. While furnishing the return of income assessee claimed additional depreciation on the Solar Power Plants.

During the scrutiny proceedings, the Assessing Officer allowed the claim of additional depreciation for the solar plant installed at Bikaner. With respect to the solar power plant at Manesar, AO contended that the solar plant was installed on the office rooftop, therefore, used for captive consumption in the office premises.

Accordingly, the additional depreciation claim was denied for the Manesar solar power plant, and the income was computed accordingly.

On appeal, Dispute Resolution Panel (DRP) upheld the additions made by AO, and the matter reached the Delhi Tribunal.

The Tribunal held that sufficient evidence was made available by the assessee in the form of documents related to the acquisition of land, purchase of solar power plants, and installation and commissioning certificate confirming the installation and commissioning of these solar power plants.

Further, it was held that the lower authorities were not justified in treating the 'factory premises' as the 'office premises'. The Solar Power Plant in question is of 160 Mega Watt capacity, and even in the wildest of imagination, it cannot be presumed to be installed for meeting the need of the office only.

Considering the fact that the Solar Power Plant is of very high capacity and it is stated at the bar that the office building is part of the factory and electricity so generated is used for the factory only, the issue was restored to AO for subsequent verification.

2. Section 68:

Provisions of Sec. 68 Couldn't be Invoked if Assessee Declared Income on Presumptive Basis u/s 44AD

In the instant case[2], the assessee is an individual engaged in the business of trading. The assessee offered the income under section 44AD on presumptive basis while furnishing the return of income. During the scrutiny proceedings, the Assessing Officer (AO) called for the details of sundry debtors and creditors. Unsatisfied with the explanation, AO made additions under section 68 to the income of the assessee.

On appeal, CIT(A) upheld the order of AO, and an appeal was filed to Jodhpur Tribunal.

The Tribunal held that the AO did not dispute the amount of revenue or gross receipt declared by the assessee by placing any contrary material. The details called for by the AO mainly include sundry debtors and creditors.

It should be noted that the assessee was not required to maintain proper books of account since he opted for presumptive taxation under section 44AD. Thus, there was no merit in AO calling for the details of sundry creditors and further adding under section 68 for unexplained sundry creditors. Since the assessee was admittedly not required to maintain the books of account, there was no basis for invoking the provision of section 68.

1 Viney Corporation Ltd. v. ACIT - [2023](Delhi-Trib.) [2023]

2 Sumit Gahlot v. Income-tax Officer - [2023] (Jodhpur-Trib.)

Thus the addition made for unexplained sundry creditors deserved to be deleted.

3. Penalty Can't be Imposed for not Getting Books of Account Audited if No Books are Maintained as per Sec. 44AA

In the instant case[3], the Assessee, an individual, filed the return of income for the relevant assessment year declaring income from business activities. Assessee was not maintaining any books of account, and even tax consultants of assessee refused to sign tax audit report on the ground that assessee maintained no books of account.

During the assessment, Assessing Officer (AO) imposed penalty upon the assessee under section 271B for violation of provisions of section 44AB.

On appeal, the CIT (A) upheld the imposition of the penalty. Aggrieved by the order, the assessee filed an appeal to the Jaipur Tribunal.

The Tribunal held that the assessee had mentioned that he filed his return of income by collecting information available to him, i.e., sales and purchases. The assessee had also categorically mentioned that he failed to produce books of account and bills/vouchers for verification of purchases and other expenditures claimed in the Profit & Loss account; hence, the assessee's net profit was not verifiable.

When the assessee did not maintain regular books of account, the question of auditing the books of account does not arise. There was a violation of provisions of section 44AA and said violation could not be extended to section 44AB. The provisions of section 44AB can only be invoked when the assessee has first complied with the provisions of section 44AA.

Therefore, the violation of section 44AA cannot continue because once it is found that the assessee did not maintain the regular books of account, the said violation cannot travel beyond the provisions of section 44AA. Hence, it cannot be held as a further violation of section 44AB.

Since the assessee was not found to have maintained the books of account, no penalty can be imposed for not getting the books of account audited as prescribed under section 271B for violation of section 44AB.

4. Capital Gains Tax Misfiled | Tribunal Directs AO to Revise Assessment Following Property Sale Error

In the instant case[4,] the Assessee filed its return of income by declaring total income including capital gains arising from sale of immovable property. Subsequently, the Assessing Officer (AO) received information that assessee sold two immovable properties during the year under consideration but offered capital gain tax on one immovable property.

Accordingly, notice under section 148 was issued. In response to the above notices, assessee had stated that due to some error while submitting the return of income, one of the property sold by the assessee was declared in his wife's return and all the relevant taxes were paid in her account.

After considering the submissions of the assessee, AO rejected the submissions made by the assessee and proceeded to make the addition in the hand of the assessee.

[3] **Lokesh Kumar Sharma v. Income-tax Officer - [2023] (Jaipur-Trib.)**

[4] **Shrikant Ghanshyam Shah v. Int. Tax Ward - [2023]**

Aggrieved by the order, assessee filed objections before Dispute Resolution Panel (DRP) but all in vain. Subsequently, an appeal was filed to Mumbai Tribunal.

The Tribunal held that due to a mistake, assessee did not declare one transaction involving capital gain on sale of the property which was in the name of the assessee. It was declared in return of assessee's wife and taxes were duly paid. Further, it was noted that both the assessee as well as assessee's wife were falling under the same tax bracket.

It is a peculiar case wherein the income was declared and rightfully paid the tax thereon but in the hands of the wrong person. In order to do the right thing assessee has to revise his return of income at the same time even the wife of the assessee has to revise her return of income. Considering that the issue involved was related to A.Y. 2013-14, it was not possible at this point of time to do so.

Since the assessee has brought on record that the assessee's wife paid the relevant tax in her return of income, it shows that even though by mistake the assessee has remitted the relevant tax on this transaction. The same transaction cannot be charged to tax twice.

Therefore, the AO was directed to intimate the AO of assessee's wife to revise the assessment and initiate the refund along with interest till date. AO to initiate the recovery of demand arising out of the assessment from assessee.

AO to make sure that there should not be any burden on the assessee in collecting the due tax along with interest considering the fact that the relevant taxes were already paid by the assessee's wife properly on time. Therefore, there was absolutely no loss to the revenue in this case.