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Tax Digest

- Recent case laws

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NEWS FEED

- ***CBDT revises guidelines for compulsory selection of ITRs for Scrutiny during FY 2022-23***

CBDT has issued guidelines for compulsory scrutiny of income-tax returns for complete scrutiny during the financial year 2022-23 and prescribes the procedure for compulsory selection in such cases (attached)

1.Registration rightly canceled as trust wasn't carrying on any charitable activity; SC dismissed review petition

Review Petition filed against Supreme Court order dismissing SLP which was against High Court ruling that registration granted to assessee trust had rightly been cancelled as assessee trust was not carrying on any charitable activity and was involved in misutilisation of bank account was to be dismissed

In the instant case¹, the assessee was a Public Charitable Trust engaged in field of education, relief to poor and other general public charitable objects. On scrutiny, the Director of Income-tax observed that the assessee trust, in collusion with its sister concerns, had hatched a web of bank transactions in order to defraud revenue and to enrich its sister concerns by giving them receipts for receipt of bogus earthquake relief donations which had entitled them to claim exemption from their taxable income. On such grounds, the Director withdrew registration granted to assessee under section 12A. The Hon'ble Tribunal did not confirm the order of Director but observed that such order was passed solely on the basis of activities carried on by assessee during previous year and suggested that Director ought to have looked into affairs of Trust for subsequent year also and without doing so, could not have withdrawn registration. The Hon'ble High Court however held that there was no relevance of events which might have taken place in later year and accordingly restored order of Director holding that registration granted to assessee trust had rightly been cancelled as assessee trust was not carrying on any charitable activity and was involved in misutilisation of bank account. A Special Leave

Petition was filed against said impugned order. The same was dismissed on the ground that there was no error apparent on face of record.

2.No denial of sec. 11 exemption if trust earning rental income to fund its charitable objects: ITAT

Where assessee-trust, registered under section 12A, and engaged in providing medical help, education help and relief to poor had let out its halls and buildings for earning rental income so as to fund its charitable objects, proviso to section 2(15) would not be attracted and assessee could not be denied exemption under section 11

In the instant case², the assessee, a charitable trust registered under section 12AA, was engaged in providing medical help, education help and relief to poor. It claimed exemption under section 11 of the IT Act. The Assessing Officer observed that the assessee had generated rental income from letting out of buildings and cultural halls, which was in nature of business activity, and hence the assessee was hit by proviso to section 2(15). Accordingly, he declined exemption under section 11 to assessee. It was noted that on an overview of copious details furnished by assessee, it was clear that assessee was genuinely pursuing activities in nature of medical help to patients, education help to deserving students and providing relief to poor and needy section of society. Further, it was not in dispute that the assessee had let out its cultural hall and buildings for earning revenue so as to fund its charitable objects. The assessee had also placed on record relevant material to substantiate same.

¹ **K. Varma Charitable Trust Vs. Director of Income Tax (Exemption) (Supreme Court of India) [2022]**

² **Oswal Bandhu Samaj Vs. Income-tax Officer (Exemptions)-1 , (ITAT Pune) [2022]**

The Hon'ble ITAT observed and held that on facts, it could not be said that assessee-trust had taken up advancement of any other object of general public utility and, thus, proviso to section 2(15), would not be attracted. Accordingly, the assessee-trust was to be allowed exemption under section 11.

3.No reassessment alleging that assessee dealt in penny stock if she duly disclosed her trading in original assessment: HC

Where assessment was sought to be reopened in case of assessee on ground that assessee had done transactions in shares of 'F', which was a penny stock company traded in Bombay Stock Exchange, however, there was no allegation at all in reasons recorded for reopening that assessee was mastermind or actively involved in rigging of share price of 'F' in stock market and assessee having admitted that it had traded in 'F' and even provided documents thereto during assessment, there being no failure to truly and fully disclose material facts, reopening of assessment after four years was not justified

In the instant case³, the assessee was an individual who filed the return of income for A.Y. 13-14 declaring income as NIL.

For the same assessment year, a notice u/s 148 was issued and assessment was sought to be reopened on the ground that its income chargeable to tax had escaped assessment within meaning of section 147 as based on information received from DDIT.

On seeking the reasons, reasons recorded for reopening were also provided. As per the reasons recorded, based on information received from DDIT (Inv)-8(1), Mumbai, the assessee had undertaken

transactions in the share of "Finalysis" which was a penny stock company traded in the Bombay Stock Exchange. The share price of Finalysis moved from a low of Rs.7/- per share in March 2012 to Rs. 180/- in March 2013 and dipped to Rs. 5/- in October 2013. Since the financials of "Finalysis" for that period did not support such a huge share price move, investigations were carried out by SEBI on "Finalysis". The reasons also mentioned that statements of directors of "Finalysis" had been recorded and they had admitted that the Company was a paper company. Investigation revealed that Petitioner had sold shares of Finalysis worth Rs. 29,37,208/- during the relevant assessment year and therefore, assessment of the said transactions has escaped assessment. As per the reasons, admittedly the assessee had disclosed during the assessment proceedings and it was seen that Petitioner has claimed long term capital gain at 10% of Rs. 29,37,208/-.

The assessee submitted that there was no allegation at all in the reasons recorded for reopening or in affidavit-in-reply that investigations had revealed that assessee was mastermind or actively involved in rigging of share price of 'F' in stock market. Further, in response to a query raised under section 142(1), the assessee had also admitted that it had traded in 'F' and even provided documents thereto. In fact, the issue of capital gains from shares which included shares of 'F' was under active consideration before Assessing Officer. The Hon'ble Court observed and held that there being no failure on the assessee's behalf to truly and fully disclose material facts, reopening of assessment after expiry of four years was not justified. The case was accordingly dismissed.

4.Submission available before AO while passing order to be considered even if it was filed after limitation period: HC

³ Rita Rajkumar Singh Vs. ACIT (High Court of Bombay) [2022]

Where assessee filed submission in response to show cause notice issued under section 148A(b) by way of e-mail addressed to AO as online submission portal was closed by revenue, since said submission was available on record, AO was required to pass order under section 148A(d) after considering same

In the instant case⁴, the assessee was issued a show cause notice under section 148A(b) on 17-3-2022 and was directed to file reply by 24-3-2022. The assessee filed an application for adjournment requesting Assessing Officer to grant time till 27-3-2022 and later filed submission by way of e-mail addressed to Assessing Officer as online submission portal was closed by revenue. Thereafter, the Assessing Officer without considering reply of assessee passed order under section 148A(d) and issued reopening notice under section 148. It was held that since submission of assessee was available on record when Assessing Officer passed impugned order under section 148A(d), same was required to be considered by Assessing Officer and impugned order passed along with reopening notice was to be set aside.

⁴ [Meenu Chaufla Vs ITO \(High Court of Delhi\) \[2022\]](#)