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Tax Digest

- Recent case laws

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One Additional Member to be Nominated to Decide Advance Rulings in Case of Difference of Opinion : S.O. 2569(E) dated 12-06-2023

The Central Board of Direct Taxes (CBDT) amended Rule 6 of the e-advance rulings Scheme, 2022. The amended rule prescribes the procedure to be adopted by the members in case of difference of opinion among the members in case of any point or points. Where members of the Board for Advance Rulings differ in opinion on any point, the Board for Advance Rulings shall refer such point to the PCCIT (International Taxation), who shall nominate one member from any other Board for Advance Rulings and, accordingly, such point shall be decided according to the opinion of the majority of the Members.

1. Sec. 54B : Exemption not Valid for Seaside Land Claimed as Agricultural Use: ITAT

In the instant case¹, the Assessee, a Non-Resident, sold land adjacent to the sea that was used by the assessee for agricultural purposes for several years and earned long-term capital gains from such sale. While furnishing the return of income, the assessee claimed exemption under section 54B from such capital gains.

Subsequently, the case was selected for scrutiny. The Assessing Officer (AO) contended that the condition stipulated under section 54B(1) was not satisfied and concluded that the asset sold was not agricultural land as no agricultural activity was carried out on it. In response, the assessee furnished the information in adangal, wherein it was submitted that the assessee grew coconut trees on the land.

Unsatisfied with the explanation, the AO denied exemption under section 54B.

On appeal, CIT(A) upheld the additions made by the AO. Aggrieved by the order, an appeal was preferred to the Chennai Tribunal.

The Tribunal held that the except for the adangal, the assessee did not produce any other document to show that he carried out agricultural activities. The adangal filed by the assessee shows that there were few coconut trees. But, simply because there were coconut trees, it did not mean that the assessee carried out agricultural operations, particularly when the assessee had not reported any agricultural income.

Further, the piece of land sold by the assessee was within the purview of the Coastal Regulation Zone [CRZ] adjoining to sea. The land in question was adjacent to the sea and not useful for any agricultural purposes. To carry out agricultural operations, water is very much required, and seawater is not useful for carrying out any agricultural activities or raising any agricultural crop.

Therefore, it was held that the assessee did not carry out any agricultural activity and affirmed the additions made by AO.

2. No Relaxation from Clubbing Provisions for Income Payable to a Minor Until She Attains Majority: HC

In the instant case², the Assessee, an individual, was entitled to 1/3rd share from the estate of his deceased husband. The remaining 2/3rd share was transferred in the name of the assessee's minor daughter. The daughter's share was deposited as a fixed deposit in the Bank, and the fixed deposit receipt was produced before the Court for safe custody until the daughter attained majority.

Assessee preferred an application under section 197(1) seeking a certificate for non-deduction of tax with respect to interest accruing annually on such fixed deposit. However, the Income-tax Officer rejected the application on the ground that the income of the minor had to be clubbed with the income of the assessee for the purpose of taxation under the Act.

Considering such tax deduction to be a huge financial burden, assessee filed a writ petition before Kerala High Court.

¹ Keshav Sunderam Rajam v. Income-tax Officer (International Taxation) - [2023] 150 taxmann.com 386 (Chennai-Trib.) [2023]

² SIBI JOY v. Income-tax Officer (TDS) - [2023] 150 taxmann.com 524 (Kerala)

The Court held that section 64(1A) clearly states that income accruing or arising in the hands of a minor child will be added to the parent's total income. Exceptions are provided only if income arises or accrues to the minor child on account of any manual work done by him or any activity involving the application of his skill, talent or specialized knowledge and experience.

The Act did not exempt the interest income accruing to the minor on an amount received as part of death benefits of her deceased father even if, by order of Court, that income can be utilized only after the minor attains majority.

Harshness in a statutory provision is no ground to hold that the income cannot be clubbed. Moreover, if this income were to be taxed only after the minor attains majority, the financial burden on the minor daughter when she attains the age of majority would be huge. Further, the tax deducted by the Bank as per section 194A will be available as credit (Rule 37BA of the Income-tax Rules, 1962). The benefit of threshold exemption is also available.

Therefore, the contention that the income could be taxed only after the minor attains majority cannot be accepted.

3. ITR not Filed in Time as CA was Discharging Family Obligations is 'Genuine Hardship', Delay to be Condoned

In the instant case³, the Assessee-company, engaged in the business of Geospatial and Engineering Services, suffered losses in its business. Since it suffered the loss in the relevant year, it was required to file its return of income before the due date prescribed under section 139(1) in order to

carry forward such losses. However, the assessee failed to furnish the return of income within the prescribed time limit and filed the same after a delay of 36 days.

Subsequently, the assessee filed an application for condonation of delay of 36 days before Principal Chief Commissioner of Income Tax (PCCIT) along with an affidavit by its Chartered Accountant (CA) demonstrating that the delay was due to family obligations of its CA. Considering it not the case of 'genuine hardship', PCCIT rejected the assessee's application for condonation of delay.

Aggrieved-assessee filed a writ petition before the Bombay High Court.

The Court held that the Central Board of Direct Taxes (Board) is vested with the power under section 119(2)(b) to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act where the Board considers it desirable or expedient so to do for avoiding genuine hardship. The Board issued various instructions in the form of Circulars, and latest by Circular No. 9/15, dated 9-6-2015. Therefore, while considering the application for condonation of delay, the authority is required to consider the genuine hardship.

The phrase genuine hardship would, inter alia, mean genuine difficulty, and it should be construed liberally, particularly in matters of entertaining applications seeking condonation of delay.

Further, there is a statement on oath of the assessee's CA contending that she was discharging her family obligations which was neither disputed nor controverted by the PCCIT. She has taken responsibility for the delay mentioning that there was a failure on her part to file the return of the

³ **Shruthiparampara Gurukulam v. Income-tax Officer - [2023] 150 taxmann.com 125 (Bangalore-Trib.)**

assessee before the due date. It is a settled principle that for the mistake on the part of the professionals, the litigant should not suffer. In addition, the delay is only of 36 days, and there is no allegation of mala fide or deliberate delay on the part of the assessee.

Thus, the delay in filing the return deserves to be condoned.

4. Incomplete Construction Cost Treated as Consideration if Developer can't Complete Project under JDA: ITAT

In the instant case⁴, the Assessee and other co-owners entered into an unregistered joint venture (JV) agreement with Developer for building construction on their land. Assessee retained 26.09 per cent of the land and transferred the remaining portion to the Developer. However, 10 per cent of the construction was left incomplete by Developer.

During the assessment proceedings, the Assessing Officer (AO) treated the JV agreement as amounting to 'transfer' under section 2(47)(v) in view of part performance as defined under section 53A of TP Act, 1882.

The assessee contended that there was no transfer under section 2(47)(vi) as the possession to the Developer was only for the limited purpose of carrying out construction, with no cash component involved in the transaction. Furthermore, the project failed, and thus, no transfer in law could have occurred or capital gain arose. Unsatisfied, AO proceeded to make additions to the income of the assessee.

The matter reached the Cochin Tribunal.

The Tribunal held that if the Developer has been subsequently unable to complete the project for any reason, the same can only be understood as a failure to deliver the consideration of the transfer. The provisions of section 2(47)(vi) would squarely apply irrespective of the fact that construction remained incomplete.

Since the assessee transferred the portion of land for the transferee's disposal in its capacity as an owner, construction by such transferee on the portion of land belonging to the transferor would amount to consideration for said transfer of land to him.

⁴ Pulikkaparambil George Jacob v. Income-tax Officer - [2023] 150 taxmann.com 314 (Cochin-Trib.)