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Tax Digest

- Recent case laws

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- ***CBDT notifies Format, Procedure, and Guidelines for submission of STT return electronically***

The Central Board of Direct Taxes (CBDT) has notified Format, Procedure, and Guidelines for submission of Form No. 1, Form No. 2 and Form No. 2A for Securities Transaction Tax (STT) electronically. STT returns shall be furnished on or before 30th June, immediately following the Financial Year in which the transaction has been recorded.

1. AO can't attach property of any person other than assessee while resorting provisions to sec. 281B

In the instant case¹, a search and seizure were undertaken under section 132 at the premises of a person and many documents were seized that showed instances of tax evasion by the assessee. On the likelihood of huge demand, Assessing Officer (AO) passed an order of provisional attachment of various properties of the assessee under section 281B.

In the list of properties belonging to the assessee and one property was owned by partnership Firm. Said property was also attached on the ground that the assessee derived 2.50% share in the profit from one of the partners of the partnership firm. Partnership Firm filed the writ petition before the Gujarat High Court against the action taken by AO.

The High Court held that the language of the provisions of section 281B is plain and simple which provides for the attachment of the property of the assessee only and no one else. The golden rule of interpretation of the statutes is that the statute has to be construed according to its plain, literal, and grammatical meaning unless it leads to absurdity. The attached property in the given case didn't belong to the assessee and thus couldn't be provisionally attached. There is a fine distinction between a case where a partner of a firm assigns his share in favour of a third person and a case where a partner constitutes a sub-partnership with his share in the main partnership. Assigning a percentage of a share in profit by a partner to a third person cannot be equated with the situation that a sub-partnership came into existence.

Considering the fact of the case, provisional attachment of property of partnership firm on the

¹ Raghunandan Enterprise Vs. Assistant Director of Income Tax (High Court of Gujarat) [2022]

ground that the assessee was assigned share in profit by one of the partner was untenable.

2. No prejudice is caused if a person complies with sec. 142(1) Notice

In the instant case², The Assessing Officer (AO) had received documents from the French official sources, indicative of the fact that the assessee was an account holder no. 2 of a Swiss Bank account in HSBC Bank.

The assessee was requested to furnish the details of the account opening form, complete bank statements, and residential status as on the date of opening of such foreign Bank Accounts. The assessee was also served with a notice calling upon her to co-operate and fill a consent-cum-waiver form to enable the tax authorities to obtain information from the Swiss Bank.

The assessee submitted that she was not obliged to fill such consent form as she had no connection with the foreign bank accounts. She further submitted that to ask the Appellant-assessee to furnish a consent letter is violative of Article 21 of the Constitution of India.

Since the assessee didn't comply with notice section 142(1), the AO levied penalty under section 271(1)(b). CIT(A) and Tribunal upheld the order of AO. Aggrieved-assessee filed the instant appeal before the Delhi High Court.

The Delhi High Court held that if the assessee really had no connection with the Swiss Bank accounts, no prejudice would have been caused to her if she had

² Jayanti Dalmia Vs. DCIT (High Court of Delhi) [2022]

complied with the notice under section 142(1) and filled the consent form.

Therefore, no question of law arises for consideration in the given case and the penalty imposed upon the assessee cannot be held to be erroneous and unwarranted.

3. AO has power to levy penalty in a remanded back case

In the instant case³, the assessee was carrying on the business of quarrying and sale of rock aggregates. The return of income filed by the assessee was accepted and the assessment was completed under section 143(3).

Later, the Pr. Commissioner of Income-tax (PCIT) initiated revision under section 263. The assessment order passed by the Assessing Officer (AO) was set aside and the matter was remanded back to AO for passing fresh assessment order.

The AO passed fresh assessment order after disallowing excessing depreciation claimed by the assessee. He also issued a show-cause notice proposing the imposition of penalty on the assessee. After considering the reply of the assessee, the penalty order was issued. Assessee approached the High Court challenging the penalty order passed by the AO. Assessee contended that the subsequent order of assessment issued consequent to the order under section 263 cannot confer the jurisdiction upon the AO to initiate proceedings for imposing penalty.

The Kerala High Court held that there is no quarrel that while issuing orders under section 263, the PCIT

cannot direct AO to impose penalty. However, when in the exercise of powers under section 263, an assessment order was set aside and remanded back to the assessing officer, all the powers of an AO get vested by operation of law. In such proceedings, if the AO expresses his satisfaction that penalty proceedings can be initiated, the same is within his jurisdiction and authority. The satisfaction recorded by the AO that proceedings for penalty must be initiated is clearly within his jurisdiction, although the original assessment order did not mention anything about initiating penalty proceedings. PCIT had set aside the assessment order in its entirety and remanded the case for fresh consideration by the AO. Thus, while issuing the fresh order of assessment, the AO was bestowed with all powers as in an original assessment, including the power to express his satisfaction for initiating penalty proceedings.

Therefore, the initiation of proceedings for imposing penalty and the consequent imposition was within the jurisdiction and authority of the AO. The writ petition was liable to be dismissed.

4. Where assessee, a trust, in earlier years had been claiming exemption under section 10(23C) and it got registration under section 12A on 2-9-2014 and it in return filed for assessment year 2014-15 claimed exempt income under section 10(23C) instead of claiming same under section 12A, mistake had occurred as a human error and thus Assessing Officer was to be directed to allow exemption under section 12A.

In the instant case⁴, The assessee is a "Parishad" namely "The Uttar Pradesh Awas Evam Vikas Parishad" which has been incorporated by the Legislative Assembly vide Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965. The scope of activities to be performed by the Parishad are contained under section 15 of the enactment under the head "function of the board" and

³ **Malleil Industries (P.) Ltd. v NFAC (High Court of Kerala) [2022]**

⁴ **U.P. Awas Evam Vikas Parishad Vs ACIT (ITAT Lucknow) [2022]**

through the “Parishad” it is the Government of Uttar Pradesh itself that has been carrying on the objects of the general public utility, in due discharge of its functions, duties and thereby it has acquired the status of a State under Article 12 of the Constitution of India. The assessee has been granted exemption u/s 12A of the Act being a charitable organization for the achievement of advancement of objects of general public utility. The assessee filed returns of income claiming its income as exempt u/s 11 of the Act. The Assessing Officer denied the exemption u/s 11 by holding that the assessee was hit by the proviso to section 2(15) of the Act as the assessee has been doing the activities which amount to carrying on of business or trade.

On appeal before CIT(A), the learned CIT(A) also upheld the order of the AO by holding that the assessee was hit by the proviso to section 2(15) of the Act. Being aggrieved, the assessee preferred the present appeal.

Held that exemption u/s 11 will not be available to an assessee if the total income of the assessee includes any income which is hit by the proviso to provisions of section 2(15) of the Act. Section 2(15) of the Act relates to definition of charitable purposes relating to general public utility. However, the proviso inserted by the Finance Act, 2012 will be quite relevant in the case of the assessee. The provisions of section 11(2), relates to spending of 85% of the income and accumulation of 15% of the income, which aspect can be examined by the Assessing Officer while allowing exemption u/s 11 of the Act.