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Tax Digest

- Recent case laws

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NEWS FEED

- **CBDT revises monetary limits to decide condonation requests in refund claims & carry forward losses**
- **CBDT releases guidelines for compulsory selection of returns for Complete Scrutiny during FY 2023-24**

Direct Tax Updates

1. No Additions without bringing Fact that Investment in Foreign Assets from Black Money Earned in India: ITAT

In the instant case[1], the assessee, an individual, purchased two insurance policies during his stay in UAE while a non-resident Indian. The assessee paid the first two premiums of the insurance policies while he was a non-resident Indian. Later, he returned to India to carry on his business activities, and his father, who was also a non-resident, paid the premium of policies.

After payment for certain years, the policy was discontinued. After approximately ten years, the assessee claimed the policy's surrender value. The assessee did not receive any income on the investments made but only received the reduced value of the investment made in the insurance policies. Assessee disclosed such receipt in his income return in the year of receipt.

During the assessment proceedings, the Assessing Officer (AO) concluded that the assessee failed to disclose these assets in the income tax return and didn't give any details during the one-time compliance window provided under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015.

Accordingly, AO assessed the undisclosed foreign income and assets under the Black Money and Imposition of Tax Act, 2015.

On appeal, CIT(A) confirmed the AO's action, and the matter reached the Kolkata Tribunal.

The Tribunal held that it is also evident from questionnaires issued by CBDT vide Circular No. 13 of 2015 dated 6-7-2015 that the foreign asset is liable to be taxed (whether reported in return or not) if the source of investment in such asset is unexplained.

In the instant case, the assessee successfully explained the source of investment, which is undoubtedly from the income earned outside India, part of which was paid by the assessee in the capacity of a non-resident Indian and the remaining part is paid by the assessee's father, who was also a non-resident Indian from his sources of income/asset located outside India.

There is no iota of evidence by the AO which could indicate that any element of the alleged investment in foreign assets was from so-called black money earned in India. Complete details of the bank account, along with the date of payment of the insurance policy premium, support this fact that the assessee had successfully explained the source of investment in the alleged foreign asset in the form of investment in insurance policy.

Regarding the disclosure of assets, the assessee was of bona fide belief that the policies have been discontinued and the amount invested has been forfeited. Only during 2018-19 that the assessee comes across the information of being eligible to lodge the claim for a refund of surrender value.

Further, the value of the alleged investments received by the assessee in India has already been subjected to Income-tax and taxing the same amount under the Black Money Act 2015 will be tantamount to double taxation. Thus, AO was not justified in invoking the provisions of Black Money.

2. Section 10(37):

Sec. 10(37) Exemption not Denied Solely due to State Goverment Compensation Order: ITAT

[1] Sri Srinjoy Bose v. ADIT (Inv.) - [2023] 150 taxmann.com 273 (Kolkata-Trib.) [2023]

In the instant case[2], the assessee received compensation from the Jammu and Kashmir Govt. for acquiring rural agricultural land in the village Chinore, Jammu. While furnishing the return of income, the assessee claimed such income as exempt under section 10(37).

Considering that the State Government awarded the compensation amount, the Assessing Officer (AO) denied the exemption and taxed the compensation under head Capital Gains.

On appeal, the CIT(A) granted relief to the assessee and the matter reached the Amritsar Tribunal.

The Tribunal held that the provisions should be construed in such a manner to ensure that the object of the Income-tax Act is fulfilled. If the language of the Act is clear, then the language has to be followed. If the language admits two meanings, then the matter is to be considered with reference to the objects and reasons and find out the true meaning of the provisions as intended by the legislature.

In the given case, the assessee's agricultural land was compulsorily acquired by following the entire procedure prescribed under Land Acquisition Act. At the time of acquisition, the said land was under agricultural cultivation. Thus, merely because the compensation amount was awarded, determined and disbursed vide order of the State Govt., it would not change the character of acquisition from that of compulsory acquisition to voluntary sale to deny Section 10(37) exemption.

Therefore, there was no infirmity or perversity in the order of the Commissioner (Appeals).

Accordingly, the impugned order was to be sustained.

3. AO Can't Make Additions Based on Inflated Stock in the Stock Statement Submitted to the Bank: HC

In the instant case[3], during the relevant assessment year, the Assessing Officer (AO) noticed the difference in the stock valuation as per books of account and the statement furnished to the bank for approval of cash credit limit. In response, the assessee explained that the stock was declared to the bank purely on an estimate basis. The bank relied upon the stock statement, granted cash credit facility and never physically verified whether physical stock tallies with the stock statement.

Unsatisfied with the response, AO made additions to the assessee's income based on the stock report submitted to the bank.

On appeal, the CIT(A) confirmed the additions and the Tribunal upheld the same. Aggrieved by the order, the assessee filed the instant appeal before the Calcutta High Court.

The High Court held that the assessee's income is to be assessed by the AO based on the material which was required to be considered for the purpose of assessment and ordinarily not based on the statement that the assessee gave to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank.

Mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the

[2] **Income-tax Officer v. Mohd. Aslam Baggar - [2023] 150 taxmann.com 364 (Amritsar-Trib.)**

[3] **Sri Chitta Ranjan Bera v. ITO - [2023] 150 taxmann.com 277 (Calcutta)**

assessee. The burden of showing that the assessee had undisclosed income is on the AO.

That burden cannot be discharged by merely referring to the statement given by the assessee to a third party in connection with the transaction, which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income.

Thus, it is the burden upon the AO to show that the assessee had undisclosed income, and merely by referring to a bank statement, the assessment could not have been completed. Consequently, the assessee's appeal was allowed.

4. Section 12A & 80G:

Vedic thoughts not Linked to Religion, Trust Eligible to Sec. 12A & 80G Registration: ITAT

In the instant case[4], the assessee, a public charitable trust, was formed to preach the Rigveda in a traditional Gurukula concept. The beneficiaries of the trust were members of the general public irrespective of race, religion, caste, community, creed or gender. It applied for regular registration under sections 12A and 80G for recognition as a charitable trust.

The Commissioner held that the assessee was engaged in a religious activity of teaching Vedas, a Hindu religious scripture, to Hindu students, which involved offering worship and prayer to God. Thus, the trust's whole purpose was religious. Therefore, the assessee was not eligible for registration as per Explanation 3 to section 80G.

Aggrieved by the order, the assessee filed an appeal to the Bangalore Tribunal.

The Tribunal held that the significance of the Veda is manifold. It has been universally acknowledged that the Veda is the earliest available literature of humanity. The Veda contains the highest spiritual knowledge (Para vidya) as well as the knowledge of the world (Apara vidya). Thus, apart from philosophy, descriptions of various aspects of the different subjects, such as sciences, medicine, political science, psychology, agriculture, poetry, art, music etc. are found here. It cannot be said that Vedas are confined to a particular set of people or people belonging to a particular religion. It is for the spiritual upliftment of mankind.

In the instant case, the assessee-trust does not have any object 'to establish, maintain and to grant and/or aid to public places of worship and prayer halls'. The assessee only teaches the students how to recite the Vedas. There is a particular method of pronunciation of Vedas with Swaras attached to it. The recitation and pronunciation of Vedas are what is taught by the assessee, and it is like teaching any other Sanskrit literature. The teaching of Vedas does not involve offering worship and prayer to God, as held by the Commissioner.

Explanation 3 to section 80G states that "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature. The word "Hindu" is not defined in any of the texts nor in judge made law. British administrators gave the word to inhabitants of India who were not Christians, Muslims, Parsis or Jews. It consists of a number of communities with different Gods being worshipped in different manners,

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

rituals, and ethical codes. It is a settled principle that Hinduism is a way of life and not a religion.

Propagation of Vedic thoughts and philosophy cannot be attributed to any religion as the same is more concerned with the lifestyle of human beings. Thus, the activities carried on by the assessee-trust are charitable in the nature of education, relief of the poor and not Religious, as concluded by the Commissioner.