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## Tax Digest

- Recent case laws

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**NEWS**

**FEED**

- *The Income Tax Department directed software services giant Infosys Ltd to tackle fresh glitches in its e-filing portal after many users complained about being unable to log on to the website and struggled with the search option.*

### **1. Section-68 “Cash Credits”:**

**ITAT deletes addition of unexplained cash credits as assessee discharges primary onus submitting documentary evidences.**

In the instant case<sup>1</sup>, the assessee is in the business of manufacturing M.S. ingots, filed its return of income for A Y 2012-13 and later on it was selected for scrutiny assessment.

During the course of the assessment proceedings, AO observed that the assessee company, during its first year of operation, was in receipt of share capital/premium amounting to Rs.66.65 Lakh from 16 persons. Also, it was noticed that it had raised loans from various parties. In order to verify the genuineness and veracity of the share capital or premium claimed by the assessee to have been received during the year under consideration, the A.O. called for certain details from the share applicants. However, the notices were not complied with by the respective parties and remained unanswered. The assessee had failed to discharge the onus that was cast upon it as regards establishing the identity and creditworthiness of the share applicants. The assessee failed to prove the genuineness of the transactions involving the receipt of share capital/premium from the parties concerned. The AO held the entire amount of Rs.66.65 lakhs as the income of the assessee from undisclosed sources under section 68.

Aggrieved by the AO, assessee went for an appeal before the Ld. CIT(A), it was observed that the amounts were received by the assessee from 16 people, wherein 13 of those were either family members or close relatives of the directors of the assessee.

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<sup>1</sup> ITO Vs. Hanumant Ingots Pvt. Ltd (ITAT, Raipur) [2022]

It also held that in the course of assessment proceedings, assessee had furnished PAN numbers., copies of returns of income, computation of income, share application forms, bank statements, balance sheets, bank account details, along with the source of payment of the aforementioned amounts by the respective share applicants. It was further noticed by the CIT (A) that the A.O had not drawn any adverse inferences as regards the documentary evidence which was filed by the assessee before him. CIT(A) reversed the AO’s order and deleted such additions.

Aggrieved by the CIT(A) order, Revenue went for a further appeal to Hon’ble Tribunal, it found that the AO had not drawn any adverse inferences on the documentary evidence that was filed by the assessee in discharge of the primary onus that was cast upon it. Therefore, the assessee proved the identity and creditworthiness of the share applicants as well as the genuineness of the transaction by having received the share capital/premium from the applicants, and held that AO has no evidence or material through which the amounts received therein can be held as unexplained cash credits under Section 68.

### **2. Section-68 “Cash Credits”:**

**Violation of RBI Notification Prohibiting Deposit Of Demonetized Notes Does not attract Addition On Account of Unexplained Cash Credits.**

In the instant case<sup>2</sup>, the assessee is a Primary Agriculture Credit Co-operative Society providing credit facilities to its members.

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<sup>2</sup> Prathamika K. Pattina Vs. ITO (ITAT, Bangaluru) [2022]

The AO noticed that the assessee had deposited a sum of Rs. 36.36 Lakh in the form of Specified Bank Notes (SBN), i.e., demonetized notes of Rs. 1,000 and Rs. 500 during the period from 09.11.2016 to 31.12.2016. The assessee explained the sources of these SBN as the deposits made by the members of the assessee society, whose identity is proved.

The AO took the view that the assessee was not permitted by the RBI to accept demonetized currency during the demonetization period and rejected the assessee's claim that deposits made into its bank account were made with currency received from its members. Accordingly, the AO assessed the amount of Rs. 36.16 Lakh as an unexplained cash deposit under section 68.

Aggrieved by such order, assessee went for an appeal to Ld. CIT(A) and it also confirmed the addition and held that assessee was barred from collecting the demonetised notes.

Assessee went for a further appeal before Hon'ble Tribunal, it held that the SBN's have been collected by the assessee prior to the appointed date of 31.12.2016 after which assessee was precluded from accepting SBNs from its members, the reasoning relating to the contravention of RBI rule failed.

The Hon'ble Tribunal relied on the decision of *Bhageeratha Pattina Sahakara Sangha Niyamitha vs. ITO* in which it was ruled that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 and set aside the order passed by CIT (A) on the issue and directed the AO to delete the disallowance.

### **3. Section-271 "Failure to furnish returns, comply with notices, concealment of income, etc.":**

#### **Notice imposing penalty for concealment of income can't be issued without specifying the limb.**

In the instant case<sup>3</sup>, the assessee has not filed return of income for the A Y 2011-12, assessment was reopened under Section 147 after recording reasons for the same. The assessment was completed making various additions and in the meantime penalty proceeding was initiated under Section 271 (1)(c). Assessee filed a notice in reply stating that notice for penalty proceeding did not specify the nature of default committed by the assessee whether it is concealment of income or furnishing of inaccurate particulars of income. Particulars of income was before AO but he wrongly mentioned that return of income was not filed.

Aggrieved by the penalty order, assessee filed appeal before Ld. CIT(A), which was later on rejected.

Assessee went for a further appeal before the Hon'ble Tribunal. It held that entire basis of imposing penalty was concealment of income on part of assessee as to non-filing of return of income by the assessee. But as per records it can be said that assessee has filed return of income before AO and CIT(A) and quoted in written submissions. Both AO as well as CIT(A) has not verified this fact and simply imposed penalty on concealment of income under Section 271(1) (c) without giving any opportunity to assessee at appellate stage. It further held that, Notice issued under Section 271(1) (c) read with Section 274 the specific limb was not mentioned in the notice. It relied on decision of Hon'ble Supreme Court in CIT V. SSA's Emerald Meadows and CIT V. Manjunatha Cotton &

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<sup>3</sup> **Manjriben P. Raninga Vs. ITO (ITAT, Ahmedabad) [2022]**

Ginning (Karn.) in which it was held that notice issued by the AO should specify the limb of Section 271(1)(c). The appeal of the assessee was allowed.

**4. Section-148 “ Issue of notice where income has escaped assessment”**

**Show cause notice mailed to wrong email address , the matter remanded back to the AO for fresh decision.**

In the instant case<sup>4</sup>, the assessee filed a writ petition challenging the show cause notice under Section 148A(b), order under Section 148A(d) and notice under Section 148 for the AY 2018-19.

The assessee submits that in terms of “information” available with the revenue, it has alleged that assessee's claim for IGST refund was incorrect and hence the said amount is required to be disallowed. Assessee states that IGST refund being a balance sheet item is not a claim made in the statement of profit and loss and cannot be termed as income chargeable to tax having escaped assessment and hence the reassessment under Section 147 and notice under Section 148 are illegal. He further states that order passed under Section 148A(d) and notice under Section 148 has been passed in gross violation of principles of natural justice as it does not even consider the adjournment asked by assessee so as to enable him to file a reply on merits.

The assessee came to know about show cause notice on 24.03.2022 which was well dated 15.03.2022 because it was sent in a wrong email address.

Assessee contented that assessee did not have opportunity to file a reply on merits and the matter should be remanded back to the AO for fresh decision.

Hon'ble High Court held that, order under Section 148A(d) and notice under Section 148 be set aside and the matter was remanded back to AO for fresh decision. Also, assessee was given additional time to file response to show cause notice issued under Section 148A(b). The court specified that it has not commented on the merits of the case and all rights and contentions of both the parties are open.

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<sup>4</sup> **Schneider Electric India P Ltd. Vs. ACIT (High Court of New Delhi) [2022]**