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Tax Digest

- Recent case laws

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CBDT Launches E-Campaign Asking Taxpayers to Pay Advance Tax Based on Specified Financial Transactions of FY 2023-24

Press Release, dated 10-03-2024

The Income-tax Dept. has received certain information on specific financial transactions undertaken by persons/entities during the Financial Year 2023-24. Based on an analysis of the taxes paid so far during the current financial year, the Department has identified persons/entities where payment of taxes is not commensurate with the financial transactions made by the persons/entities concerned during the said period. Hence, as a part of taxpayer service initiative, the Department is undertaking an e-campaign, which aims to inform such persons/entities of significant financial transactions through email and SMS, urging them to compute their advance tax liability correctly and deposit the due advance tax on or before 15.03.2024.

1. Delhi ITAT Dismisses Congress Party's Appeal to Stay Recovery of Outstanding Demand

In the instant case¹, Assessee-Indian National Congress (INC) is in a pickle. The political party has been slapped with a tax demand of over Rs. 100 crores. And the party is fighting tooth and nail to avoid paying the sum.

Assessing Officer denied the exemption to assessee, alleging that assessee filed its income tax returns after the due date and didn't maintain a record of all donations received over Rs. 20,000. Further, the assessee party received donations in cash over Rs. 2,000 and didn't maintain a record of these donations.

Assessee claimed that it duly filed return under section 139(4). Assessee argued that the recovery proceedings had been initiated with malafide intent. It says that the tax dept. is trying to time the recovery proceedings so that the party won't have enough resources to contest the upcoming parliamentary elections.

The matter reached before the Tribunal.

The Delhi Tribunal held that the Political Parties were required to file their income return in Section 139(4B) of the Act. The 3rd Proviso to Sec. 13A makes it mandatory for a Political Party seeking exemption under Section 13A to furnish its return of income for the relevant year on or before the due date under section 139.

The third Proviso contains the expression "the due date under section 139" and a plain reading of the provisions shows that the due date for Section 139 is defined in terms of Explanation 2 below Section 139(1) and that such 'due date' is not controlled by

the provisions of sub-section (4) of Section 139, which merely permits the filing of belated returns.

Further, it should be noted that the recovery proceedings were initiated only after the assessee failed to pay 20% of the demand as per the option given to it by the Assessing Officer. The party had the option to pay 20% of the demand, and the balance of the demand would not be enforced during the pendency of the appeal before the CIT(A).

However, the party neither took the option of depositing 20% of the demand nor challenged the rejection of its stay application before any higher authority.

So, the Assessing Officer issued a letter seeking payment of the entire outstanding demand. And the assessee sought stay on the recovery of demand under Section 220(6) because of the pendency of the appeal before the CIT(A).

However, the CIT(A) dismissed the assessee's appeal on 28th March 2023, against which an appeal was preferred before the ITAT only on 24th May 2023. Even at that stage, no stay on the recovery of demand was sought until the Assessing Officer initiated the instant proceedings under Section 226 (3) on 13th February 2024.

So, the allegations of malice made against the action of the Revenue for initiating recovery proceedings were baseless. No prima facie case has been made out by the assessee in the application for stay on the recovery of demand outstanding. Accordingly, the recovery notice issued by the Assessing Officer was justified.

2. Sum Received on Maturity of Keyman Insurance Policy Purchased by Employee From Employer is Exempt u/s 10(10D)

¹ Indian National Congress All India Congress Committee vs. DCIT- [2024] (Delhi Tribunal)

In the instant case², A Keyman Insurance policy was taken by a proprietorship concern in which the assessee was a Keyman. Subsequently, the proprietorship concern was dissolved, and the assessee purchased the Keyman Insurance policy after paying a surrender value. During the year under consideration, the assessee received maturity proceeds from such insurance policy.

While furnishing the return of income, the assessee claimed exemption of such maturity proceeds under section 10(10D). During the assessment proceedings, the Assessing Officer (AO) contended that the maturity proceeds were received from the Keyman Insurance policy and denied exemption under section 10(10D).

On appeal, CIT(A) confirmed the additions made by AO. Aggrieved by the order, the assessee filed an appeal before the Delhi Tribunal.

The Tribunal held that there was merit in the assessee's contention that if the policy was transferred before its maturity, it would lose its character. There was no prohibition on the assignment or conversion under the Income-tax Act.

Once there is an assignment, it leads to conversion, and the character of the policy changes. The insurance company has also clarified that on assignment, the policy does not remain a keyman policy but is converted into an ordinary one.

In these circumstances, it is not open to the AO to still allege that the policy in question is a keyman policy, and when it matures, the advantage drawn from it is taxable. One has to keep in mind that at

maturity, it is not the company but the individual who is getting the matured value of the insurance.

Accordingly, the AO was directed to delete the additions.

3. No Relief If Assessee Failed to Prove Source of Income Even If Wrong Section Was Invoked By AO

In the instant case³, For the relevant assessment year, assessee's case was selected for scrutiny. During the scrutiny proceedings, the Assessing Officer (AO) noticed that the assessee deposited cash in the Corporation Bank. The assessee submitted the copy of Income Tax Return, sale deed, Bank Account, and other details when asked. However, the assessee failed to explain the source of such cash deposit, AO proceeded to make additions to the income of the assessee under section 68.

The assessee contended that section 68 had no application in his case as the assessee was not maintaining any books of accounts.

On appeal, CIT(A) and the Tribunal confirmed the additions made by AO. Aggrieved by the order, the assessee filed a writ petition before the Jharkhand High Court.

The High Court held that it was true that the passbook itself could not be treated as a book of accounts. However, only by not mentioning the correct provision in the assessment order can an amount that may be an income under the provisions of the Act not be allowed to go untaxed. Admittedly, under section 69, there is a provision for undisclosed investment, and an amount deposited in the Bank will come under the purview of investment. Otherwise, no prejudice has been

² Mihir Parikh vs. ACIT - [2024] (Dehli Tribunal)

³ Rajmeet Singh vs. Income tax officer - [2024] (High Court of Jharkhand)

caused to the assessee as he failed to show any prejudice even when a wrong provision was mentioned in the assessment order. Further, it is a settled legal principle that if a source of power can be traced, the mere mentioning of the wrong section/provision will not invalidate the order.

In the instant case, the source of income was not proved, and the assessee failed to establish the identity/creditworthiness/genuineness of the creditors who gave cash loans as he claimed.

Usually, the matter would have been remitted to the AO for mentioning the correct provision and proceeding per law. But in the instant matter, as the source of income and the creditors' identity/creditworthiness/genuineness were not proved, it will be tantamount to a futile exercise.

Accordingly, the additions made by the AO were justified.

4. No Sec. 194H TDS on Income of Franchisee/Distributor from Sale of Prepaid Coupons/Starter-kits

In the instant case⁴, The assessee is a cellular mobile telephone service provider. The assessee provides starter kits (SIM Cards) and prepaid coupons of a specified value at discounted prices to its distributors. Further, such SIM cards are sold by distributors to end users. The Assessing Officer (AO) considered that the difference between the discounted price and the actual sale value is commission or brokerage. Accordingly, the AO contended that the assessee failed to comply with the provisions of tax deduction under section 194H.

The High Courts of Delhi and Calcutta have held that the assessee was liable to deduct tax at source under Section 194H. In contrast, the High Courts of Rajasthan, Karnataka and Bombay have held that Section 194H is not attracted.

The matter reached before the Supreme Court.

The Supreme Court clarified the meaning of "commission or brokerage" for tax purposes. It includes payments made directly or indirectly by someone acting for another for various services, except professional ones. However, this doesn't apply to regular business transactions where the payer isn't responsible for the recipient's income.

In this case, the company doesn't pay the distributors' income. The term "indirectly" doesn't restrict how the company does business. Distributors are independent contractors, unlike agents who act on behalf of someone else.

Franchise agreements are complex but may still involve independent contractors. These contractors are free from control and don't owe the company business accounts.

The concept of "agent" is distinct from other relationships like employer-employee. However, both agents and independent contractors can act for others. Yet, the nature of their roles is different enough for tax purposes.

An agent, in this context, is someone who can legally bind their principal through contracts or property transactions.

Therefore, the company doesn't have to deduct tax from payments to distributors or franchisees for selling prepaid products.

⁴ [Bharati Cellular Ltd vs .Assistant commissioner of Income tax - \[2024\] \(Supreme Court\)](#)