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# *Tax Digest*

- **Recent case laws**

## March 26, 2024

NEWS FEED

### CBDT Issues Corrigendum to Include Sec. 43B(h) Disallowance Under Clause 22 of Form 3CD

*Notification No. 34 /2024, dated 19-03-2024*

The CBDT notified changes to the Form 3CD vide Notification No. 27/2024 /F. No. 370142/3/2024-TPL, dated 05-03-2024.

The changes duly include **disclosure of section 43B(h) disallowance under clause 26**. However, Clause 22, pertaining to interest restrictions under the MSME Development Act, was not amended.

The clause is now amended to include disclosure of the amount disallowed under section 43B(h) **along with the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.**

Direct Tax Updates

### 1. "Congress" Can File Fresh Stay Application Before ITAT as 48% of Outstanding Demand Has Been Recovered

In the instant case[1], the assessee-Indian National Congress was fighting a legal battle with the Income Tax Department over the recovery of tax demand. On March 8 2024, the Income Tax Appellate Tribunal (ITAT) rejected the assessee's application for a stay on the demand recovery.

The assessee approached the Delhi High Court seeking relief.

The Delhi High Court held that ITAT had carefully examined the various contentions and challenges which stood raised and expressed a prima facie opinion, which alone was required while considering an application for stay.

It would be wholly inappropriate to re-examine or reconsider those questions in extenso, bearing in mind the limited evaluation that the ITAT was liable to undertake and the fact that the principal appeal was pending consideration before the ITAT.

Further, the 20% deposit mentioned in the OM dated July 31 2017 isn't set in stone or inviolable. It's guidance for authorities considering stay applications during appeals. The OM doesn't guarantee the right for the assessee to claim a stay by depositing 20%. Authorities decide on a sufficient amount to secure revenue interest and maintain balance.

Given the repeated adjournments requested by the assessee and their refusal to proceed with the appeal, the court has granted permission to the assessee to file a new stay application before the ITAT, considering the recovery of Rs. 65.94 crores by the Assessing Officer, which was 48% of the outstanding demand.

### 2. Following CBDT'S Digital Evidence Investigation Manual During Search and Seizure is Mandatory & Not Optional

In the instant case[2], a search under section 132 was conducted on the assessee's premises. During the search proceedings, electronic data was seized, and a show cause notice was sent. Subsequently, an assessment order was passed.

The assessee approached the Madras High Court and contended that the digital data evidence was collected from unknown locations without any valid search warrant and without following the CBDT's guidelines laid down in the 'Digital Evidence Investigation Manual'.

The High Court held that section 119 provides that the CBDT may issue such orders, instructions and directions from time to time to other income tax authorities for proper administration of the Income-tax Act. Such authority and other persons shall observe and follow such orders, instructions and directions of the Board. Therefore, if the CBDT issued any orders, instructions, directions, etc., for the Authorities, the same must be observed or followed by the Authorities concerned.

[1] - [2024] (High Court of Delhi)

[2] Saravana Selvarathnam Retails (P.) Ltd. vs. Assistant Commissioner of Income-tax [2024] (High Court of Madras)

In the instant case, an issue of suspicion was involved about the collection and maintenance of data by the Department, whereby more than 52,000 files were corrupted, and the Department misplaced some of them due to the storage of data or files in a very poor and negligent manner.

Under these circumstances, before passing the assessment order, the data relied upon by the Assessing Officer (AO) had to be corroborated by any additional evidence since the same was a mandatory requirement as per the Digital Evidence Investigation Manual. The electronic data was collected without following the various procedures laid down in the Digital Evidence Investigation Manual.

Since AO had not followed the Digital Evidence Investigation Manual while collecting and preserving the evidence, as per the law laid down by the Apex Court in Dhakeswari Cotton Mills Limited v. Commissioner of Income Tax (1954) 26 ITR 775 (SC), if there is no corroborative evidence and proved in the manner known to law, the digital data collected by the Department in the course of search and seizure and thus, the said search and seizure is against the law and ab initio bad.

Therefore, the manual issued by the CBDT would be in the nature of orders, instructions and directions as prescribed under section 119(1). In such cases, the Department must follow it.

### 3. Expenditure Incurred on Installation of Lift in House to be Allowed as Cost of Improvement for Capital Gain Purpose

In the instant case[3], during the relevant assessment year, the assessee had sold his residential house. While furnishing the return of income, the assessee claimed a deduction for the cost of improvement from the Long-term capital gains.

Meanwhile, in the assessment proceedings, the Assessing Officer (AO) noticed that the cost of improvement was claimed for the expenses incurred for installing the Lift. Contending such installation as not essential for making the house habitable, AO denied the claim of cost of improvement.

On appeal, the CIT(A) confirmed the disallowance made by AO and the matter reached before the Delhi Tribunal.

The Tribunal held that the assessee submitted a handwritten note signed by a person admitting the receipt of such amount. The AO did not dispute importing a pneumatic vacuum elevator (PVE). He held that it was not essential for the improvement of the house to make it habitable.

It was found that the father of the assessee, who was 90 years old, was staying with the assessee, which was also a fact on record before the AO. Accordingly, it was held that the amount incurred for the installation of the Lift is an allowable item for the cost of improvement.

### 4. Income from Revocable Transfer of Assets to be Taxed in Hands of Settler and Not in Trust

[3] **Rajiv Ghai vs. ACIT - [2024] (Delhi-Trib.)**

In the instant case[4], the Assessee was a Revocable Private Trust and didn't file the return of income for the disputed Assessment Year. As per AIR information, the assessee had purchased units of mutual funds worth more than Rs. 2.5 crores. Based on this information, a reopening notice was issued, which was unserved. Later, the Assessing Officer (AO) issued a show-cause notice to pass the best judgment assessment, and an addition was made on account of the purchase of mutual funds.

On appeal, the Commissioner (Appeals) upheld the additions made by the Assessing Officer (AO). Aggrieved by the order, the assessee filed an appeal before the Mumbai Tribunal.

The Tribunal held that there was no dispute that the assessee was a 'revocable trust'. It purchased mutual fund units, and income from such funds was offered to tax in the Income Tax Return of the Settler. The settler had offered the capital gain on mutual funds of the revocable family private trust.

From the plain reading of section 61, read with section 63, the income arising from the revocable transfer of assets is taxable in the hands of the transferor, i.e., the settler of the revocable trust. It is to be clubbed in the total income of the transferor and not in the total income of the transferee of the assets. It is noted that from the trust deed, the settler may revoke the deed, and the entire trust fund shall be reinvested in the settler. Thus, even as per the terms of the trust deed, the income or any source of investment in the mutual funds ought to be taxable in the hands of the settler. Thus, even as per law, the income could not have been taxed in the hands of the assessee-trust.

Further, it was brought on record that income has already been offered in the hands of the settler, and then taxing the same amount again in the hands of the trust is wholly arbitrary. AO did not question the source of mutual funds.

In addition to similar issue for the other assessment years, the AO accepted the assessee's contention, and no addition was made on account of any income/purchase of mutual funds investment. Accordingly, the additions were deleted.

[4] **M/s. Reporter Family Private Trust vs. AO - [2024] (Mumbai-Trib.)**