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Tax Digest

- Recent case laws

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CBDT Introduces 'On-Screen Functionality' to Reconcile Mismatch Between Third-Party Information & ITR

Press Release, dated 26-02-2024

The Income Tax Department has identified certain mismatches between the information received from third parties on interest and dividend income and the Income Tax Return (ITR) filed by the taxpayers. In many cases, taxpayers have not even filed their ITR. To reconcile the mismatch, an on-screen functionality has been made available in the Compliance portal of the e-filing website <https://eportal.incometax.gov.in> for taxpayers to provide their responses for Financial Years 2021-22 and 2022-23. The taxpayers are also being made aware of the mismatch through SMS and emails as per details available from the department.

1. Stay Granted by High Courts Cannot Be Vacated Automatically

In the instant case¹, in 2018, a three-judge Bench of the Supreme Court, in the case of Asian Resurfacing of Road Agency (P) Ltd vs CBI, criminal appeal nos. 1375-1376 of 2013 issued a directive stipulating that in all ongoing cases where a stay had been granted against civil or criminal trial proceedings, such stay would automatically lapse six months after the date of judgment unless extended by a speaking order.

The court decision in the case of Asian Resurfacing was met with a lot of criticism. People said the judgement was arbitrary and violated the principles of natural justice. The Court was also accused of overstepping its boundaries and trying to legislate. Thus, the matter reached before the larger bench of the Supreme Court for reconsideration.

In this landmark judgement, the Supreme Court has struck down the automatic vacation of stay orders. This means that if a High Court grants a stay on a case, it won't automatically expire after a certain period. The Court must hear the matter and decide whether to vacate the stay.

The Apex Court held that the directions issued in that case were obviously issued under Article 142 of the Constitution, which conferred jurisdiction on the Court to pass such a decree or make such order necessary for doing complete justice in any pending case.

This jurisdiction can be exercised to do complete justice between the parties before the Court. However, it cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who were not parties to the proceedings.

Further, Article 142 did not empower the Court to ignore the substantive rights of the litigants. While exercising jurisdiction under Article 142 of the Constitution of India, the Apex Court can always issue procedural directions to the Courts to streamline procedural aspects and iron out the changes in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it.

The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right, and the power of the Supreme Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

Therefore, there cannot be automatic vacation of stay granted by the High Court. The Court also said that it was not possible to lay down any time schedules for the conclusion of civil/criminal proceedings.

The Court has also laid down procedures to be adopted by High Courts while passing interim orders of stay of proceedings and dealing with applications for vacating interim stay.

2. Discrimination in Taxability of Leave Encashment of Bank Employees vis-à-vis Govt. Employees is Valid

In the instant case², the assessee, a retired State Bank of India employee, received a sum as a leave encashment after 36 years of service. The assessee received such amount after the deduction of

¹ High Court Bar Association vs. State of U.P. - [2024] (Supreme Court)

² Purnendu Shekhar Sinha vs. Union of India - [2024] (High Court of Patna)

income tax. There is no tax deduction if he had been a Central or State Government employee on such sum as per section 10(10AA).

Thus, the assessee contended that section 10(10AA) discriminates between the similarly placed group of employees. Considering it violated Article 14 of the Constitution of India, the assessee filed a writ petition before the Patna High Court.

The High Court held that the distinction made between the Central and State Government employees vis-a-vis others is a reasonable classification that was found to be proper in various cases decided by Hon'ble the Apex Court.

Though it was accepted that a taxation law cannot claim immunity from the equality clause enshrined in Article 14 of the Constitution of India and it has to pass the test, the Court was also conscious of the fact that considering the intrinsic complexity of fiscal adjustments of diverse elements, the State had wide discretion in the matter of classification for the taxation purposes.

The legislature must have the freedom to select and classify persons, properties and income which it would tax or not. Thus, the differentiation made by the State between the employees of the Central and State Governments on the one hand and the other employees on the other in Section 10(10AA) was neither discriminating nor violative of Article 14 of the Constitution of India.

Accordingly, it was held that the petitioner, a retired State Bank of India employee, cannot claim parity with the employees of the Central and State Governments.

3. Legal Heirs Aren't Under Any Statutory Obligation to Inform IT Dept. About Death of Assessee

In the instant case³, during the relevant assessment year, the assessee sold an immovable property. It was observed that there was a difference in the property's sale value as declared by the assessee and as adopted by the Stamp Duty Authority. Since the assessee did not file the return of income under Section 139(1), and as the valuation of the property was on the higher side, it resulted in the escapement of income. Consequently, the Assessing Officer (AO) reopened the assessment.

Due to the non-response of the notices, the AO made the best judgment assessment. Subsequently, the Principal Commissioner of Income Tax (PCIT) contended that the assessment was made without proper inquiry and investigation and invoked the revision under section 263.

An appeal was filed before the Rajkot Tribunal because the original assessment order was framed in the name of a deceased person.

The Tribunal held that it was observed that the assessee had expired on 15.10.2013, while the assessment order was passed on 16.02.2015 in the name of the assessee. Therefore, evidently, at the time when the assessment order was framed, the assessee had expired. Consequently, this leads to the question of whether the deceased person's legal heir is legally obligated to inform the Tax Department about the demise of the assessee.

In the absence of any specific statutory provision under the Income Tax law which requires the legal heirs to inform the Income Tax Department about

³ Late Smt. Bhavnaben K. Punjani vs. PCIT - [2024] (Rajkot-Trib.)

the death of the assessee, the assessment order cannot be held to be valid in the eyes of the law only for the reason that the legal heirs of the deceased assessee had not informed the Income Tax Department about the death of the assessee.

Further, it is a well-established law that no assessment can be framed in the name of a person who has since expired. Any assessment order framed in the name of a deceased person without bringing the legal heirs of such person on record is invalid in the eyes of the law.

Accordingly, it was held that the order passed under section 263 was invalid.

4. Expense Incurred to Construct Bridge on a Culvert in Front of Shop to Provide Access to Customers Is Capital in Nature

In the instant case⁴, for the relevant assessment year, the assessee constructed a concrete bridge on the culvert in front of the shop so that the customers could have direct access to the shop in order to increase business turnover. During the year under consideration, the assessee sold such shop and showed capital gains in the return of income and the construction cost was claimed as a cost of improvement.

During the assessment proceedings, the Assessing Officer (AO) disallowed said claim on the ground that the assessee had been conducting business since the assessment year 2005-06 and the construction of the shop was completed in said year.

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

The Tribunal held that it was evident that the disputed cost was used for the construction of a bridge in front of the shop for improvement of the shop. The CIT(A) failed to appreciate the vital fact that the amount spent for the construction of the bridge was a capital expenditure and was essential to provide access to the shop from the road and to provide improved accessibility to the shop to facilitate greater footfall and capital value addition in turn.

Further, the source of construction was duly explained and confirmed before the authorities. The material facts of the cost of construction of the bridge are further supported by the assessee with the site plan and the photograph of the shop. However, AO had not brought on record any evidence or findings to prove that the cost of improvement or construction was never incurred. Such cost was disallowed by the AO by merely relying upon the fact and presumption that the assessee had been running the business in the shop. The documentary evidence on record was sufficient to prove that necessary construction was made.

Also, there is no bar to incur the capital expenditure while the business is running. The capital expenditure would not become revenue expenditure merely for the reason that it was incurred in connection with the cost of improvement for the promotion of business activities, which ultimately resulted in efficiently carrying on day-to-day business.

Accordingly, it is held that the cost of improvement to the shop by the construction of the culvert was capital expenditure and would be allowable as cost of improvement as claimed by the assessee.

⁴ Joginder Singh vs. ACIT - [2024] (Amritsar - Trib.)