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Tax Digest

- Recent case laws

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NEWS

FEED

- *The Central Board of Trustees, EPF, has recommended an 8.10% annual rate of interest credited on EPF accumulations in members' accounts for the financial year 2021-22. This is the lowest interest rate in at least four decades.*

1. Section-68 “Unexplained Cash Credit”:

Addition to income cannot be made u/s 68 where the assessee manages to prove the identity, creditworthiness of the investors and genuineness of the transactions during assessment.

In the instant case¹, the AO made an addition to the total income as declared by the assessee in its ITR on account of Unexplained Cash Credit through assessment u/s 143(3) of the Income Tax Act, 1961.

According to the facts and circumstances of the case, assessee’s case had been selected for scrutiny under CASS and during the course of the said assessment proceedings, it was observed by the AO that the assessee company had received fresh subscription of share capital including share premium and accordingly, he summoned its directors to personally appear with all the necessary documents u/s 131 of the Act. The assessee was also called upon to furnish all the documentary evidences to prove the genuineness of the transactions and identity and creditworthiness of the investors. But none appeared nor any books of accounts / evidences as required by the AO were produced and thus share capital and share premium could not be verified. As a result, the same was added to the income of the assessee as unexplained cash credit by the AO.

Aggrieved assessee challenged the assessment order before the Id CIT(A) who allowed assessee’s appeal after it filed all the evidences/confirmations of the investors before Ld. CIT(A) comprising of all the necessary details. Thus, the Ld. CIT(A) deleted the said disallowance made by the AO on the basis that the assessee had proved to all the three ingredients

of section 68 of the Act namely identity, creditworthiness of the investors and genuineness of the transactions.

Aggrieved, the revenue preferred an appeal before the Tribunal against the order passed by CIT(A) wherein it was held that the assessee had already proved the identity , creditworthiness of the investors and genuineness of the transactions of share capital. It was evident from the remand report produced by the AO as asked by the CIT(A) earlier, that all the investors had appeared before the AO and had filed the necessary evidences to prove the transactions of share capital. Based on the remand report, the Ld. CIT(A) had held that all the necessary documents had been duly filed by the investors in response to notices issued u/s 133(6). Therefore, the Hon’ble Tribunal did not find any merit in the contentions of the Ld. DR that the money raised by the assessee by way of share capital and share premium had wrongly been deleted by the Ld. CIT(A) and accordingly, the appeal of the revenue was dismissed.

2. Section-14A :

No disallowance can be made u/s 14A where no expenditure has been claimed against exempt income

In the instant case², the assessee had shown income under three heads, namely income from ‘salary’, income from ‘capital gain’ and income from ‘other sources’ in its ITR. Against the income from salary and income from other sources, no expenditure had been claimed by the assessee. But, out of the

¹ Income Tax Officer Vs M/s. Dhan Laxmi Gold & Jewellers Pvt Ltd (ITAT Kolkata) [2022]

² Adarsh Kanoria Vs Assistant Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]

aggregate income from 'capital gain', the major portion of the income was from 'short term capital gain' on which the assessee had already paid taxes at the rate of 15% and against the income from 'long term capital gain' no such expenditure had been claimed. Under such given facts and circumstances, where no such expenditure had been claimed which could have reduced the tax liability of the assessee, a disallowance u/s 14A of the Income Tax Act on account of alleged expenditure incurred for exempt income was made by AO and the same was further confirmed by the CIT(A).

Aggrieved, the assessee went for an appeal before the Tribunal wherein the assessee submitted that it had not claimed any expenditure against exempt income which remained undisputed by the Id. Sr. D/R. Thus, after hearing the rival contentions and perusing the records and documents filed before it, the Tribunal was of the view that in the absence of any direct nexus between the expenditure claimed against the exempt income, the AO could not have invoked the provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962. Therefore, since no expenditure had been claimed to reduce any tax liability, there remained no basis to make any disallowance of expenditure against exempt income. Thus, the Tribunal deleted the said disallowance u/s 14A of the Act and allowed the grounds raised by the assessee in its appeal.

[3. Section-56\(2\)\(viib\) read with Rule 11U and Rule 11UA of the Income Tax Rules, 1962](#)

In the instant case³, the assessee had filed its return of income declaring nil income for the A.Y.-2013-14

³ Planet Exim Pvt Ltd Vs Income Tax Officer, Kolkata (ITAT Kolkata) [2022]

and upon assessment; AO observed that the assessee had issued 80,000 equity shares of Rs.10 each at a premium of Rs. 90 per share. According to AO, the fair value of shares were assessed at Rs.49.12 per share in terms of section 56(2)(viib) read with Rule 11U and Rule 11UA of the Income Tax Rules, 1962 (hereinafter referred to as the Rules) and accordingly, the AO was of the view that the money received upon issue of shares in excess of fair market value was taxable in the hands of the assessee. He also rejected the valuation furnished by the assessee to justify the issue of shares at such premium. Therefore, an addition was made to the income of the assessee u/s 56(2)(viib) in assessment proceedings u/s 143(3) which was further confirmed by the CIT(A). The Ld. CIT(A) dismissed the ground raised by the assessee by holding that calculation of fair market value made by the AO is pursuant to section 56 of the Act read with Rule 11U and Rule 11UA of the Rules.

Aggrieved, the assessee went to the Tribunal for an appeal; which after having heard the rival parties was of the view that the assessee was incorporated a long back and over a period of time its market value had certainly increased and therefore the value of shares needed to be calculated at FMV and not at book value. The assessee had demonstrated on the basis of balance sheet of different years that market value of shares have incurred and should not be taken at book value which was not the realistic value of shares. The assessee had also filed valuation report from Chartered Accountant valuing the share at Rs.291.23 per share which was rejected by the AO. As against the price of 291.23 per share as per valuation report, the shares were issued at price of 100 per share consisting of Rs.10 as face value and Rs.90 premium per share. Considering these facts, the hon'ble Tribunal was of the opinion that the value of shares has to be at market value and that

the matter should be restored to the file of the AO with the direction to decide the issue fresh after valuing the shares at fair market value and not on the book value after affording a reasonable opportunity of hearing to the assessee. The issue was accordingly restored to the file of the AO and the appeal of the assessee was allowed for statistical purposes.

4. Section-43B “Disallowance”

In the instant case⁴, the assessee had filed its return of income under normal provisions of the Income Tax Act, 1961 and had offered disallowance under section 43B of the Act in it towards service tax, bonus and leave encashment respectively on provision basis. In the said return, the assessee had claimed deduction under section 43B of the Act towards gratuity, bonus and leave encashment respectively on payment basis. Subsequently, the assessee noticed that it had made certain inadvertent mistakes while offering disallowance and claiming deduction under section 43B of the Act. Accordingly, during the course of assessment proceedings under section 143(3) of the Act, the assessee submitted before the AO that it was entitled to additional claim towards gratuity bonus and leave encashment under section 43B of the Act. But the AO did not allow the aforesaid claim of the assessee and that too without giving reasons for rejecting the above additional claim of the assessee. Aggrieved with the above, the assessee preferred an appeal against the aforesaid order under section 143(3) of the Act before the Id. CIT(A) who after considering the submissions of the assessee admitted the above claims of the assessee and decided the same in favour of the assessee. Further, he also directed the AO to allow the claims of the assessee as per law and after carrying out necessary verification as per his satisfaction in respect of

gratuity, bonus and leave encashment paid during the year under consideration. Thus, the said grounds of the appeal were allowed for statistical purpose.

Accordingly, the AO passed an order u/s 251 read with section 143(3) of the Act giving effect to the aforesaid order of the CIT(A) wherein he missed to give effect/relief to the assessee in respect of aforesaid claim u/s 43B of the Act decided by the Id. CIT(A). The assessee again filed a letter before the AO requesting him to grant relief as per the direction of the Id. CIT(A). However, the AO did not pass any further order giving relief to the assessee. Thereafter, the assessee filed a petition u/s 154 of the Act requesting the AO to rectify the order giving effect to the order of the CIT(A) to include the relief granted by the Id. CIT(A) in respect of the aforesaid claim. However, the AO rejected the aforesaid application of the assessee observing that the defect/mistake pointed out by the assessee in the said order did not constitute mistake apparent on record.

Being aggrieved by the said order of the AO, the assessee preferred an appeal before the new Id. CIT(A). However, the new CIT(A) also rejected assessee’s claim in mechanical manner observing that the AO had mentioned in the appeal effect order that the same had been passed after necessary verifications.

Being aggrieved by the said order of the Id. CIT(A), the assessee finally preferred an appeal before the Tribunal which was of the opinion that the assessee had been a victim of error in the system and apathy on the part of the concerned Income Tax authorities. It was a clear-cut case of mistake apparent on record as the AO had failed to give full effect to the order of the CIT(A) and failed to comply with the directions given by the Id. CIT(A) of the appeal order. However, the AO had rejected the application of the assessee in a negligent and mechanical manner. Even the new CIT(A) had miserably failed to consider the simple prayer of the assessee and rejected the appeal in a mechanical manner. The assessee thus, had been left to the mercy of the system and had to approach the Tribunal for the simple case that the AO might have solved simply. The action of the AO was not only negligent but contemptuous in nature as he

⁴ [Fives Stein India Projects Pvt Ltd Vs Deputy Commissioner of Income Tax, Kolkata \(ITAT Kolkata\) \[2022\]](#)

had failed to comply with the directions given by his appellate authority. Thus, the hon'ble Tribunal allowed the appeal of the assessee and also directed the AO to give full appeal effect to the said order and to comply with the directions given by the CIT(A) in respect of the aforesaid claim of the assessee.