



2, India Exchange Place,
2nd Floor, Room No 10,
Kolkata – 700001

Ph: 033-22306990/ 40032841
Email id: info@acbhuteria.com

Tax Digest

- Recent case laws

March 6, 2023



**CBDT ISSUES CORRIGENDUM TO ITR-7
NOTIFIED FOR AY 2023-24**

**FOLLOW INSTRUCTION NO. 7/2017
CAREFULLY FOR REVISION/RECTIFICATION IF
REVENUE AUDIT OBJECTION IS ACCEPTED:
CBDT**

**CIRCULAR F. NO. 246/06/2023-A&PAC-I-
79, DATED 16-2-2023**

1. Section 80G:

SC sets aside order of denial of registration to trust u/s 80G by invoking sec 80G(5B) without brining facts on record; Matter remanded to CIT for fresh decision

In the instant case¹, the assessee is a trust whose objects include inter alia spiritual awakening of the common masses, spreading teachings of great Indian saints, organizing gatherings of the people desirous to be benefited from spiritual preachings, publicizing such preachings and philosophies of great saints and extending financial assistance to the poor, destitute etc.

The Commissioner to whom the assessee applied for grant of exemption of the donations received by it, refused that benefit citing Section 80G (5B) of the Act and noticing that the assessee was spending more than 5% of the receipts for religious purposes such as puja expenses besides which it also incurred telecast expenses. The ITAT and the High Court principally went by the circumstance that the certificate under Section 12AA of the Income Tax Act was subsisting.

The Hon'ble Supreme Court having heard counsel for both the parties and having considered the record, what was evident was that neither the order of refusal of the certificate under Section 80G (5B) nor the subsequent order of the ITAT dealt with essential facts as to the quantum of receipts and the expenditure incurred. While there could be no dispute that the assessee asserts that it continued to hold exemption under Section 12AA of the Income Tax Act, nevertheless, for the benefit under Section 80G (5B), the requirements of that provision had to be satisfied separately.

¹ **Commissioner of Income-tax (Exemption) vs. Sant Girdhar Anand Parmhans Sant Ashram (Supreme Court of India) [2023]**

In view of the fact that the Commissioner's order as well as the order of the ITAT were bereft of any factual details as to the nature of activities which the assessee/applicant carried on as well as the details of the accounts involved and furthermore, having regard to the fact that the assessee, for some reason, did not participate in the proceedings before the Commissioner of Income Tax except filing of written submissions, this Court was of the opinion that the matter was required to be considered afresh.

Accordingly, the matter was set aside for fresh consideration by the Commissioner of Income Tax Exemption, Chandigarh in light of the contentions to be urged on behalf of the assessee.

2. Section 50C:

Section 50C would not be made applicable to determine capital gains on compulsory acquisition of land by National Highways Authority of India (NHAI) as question of payment of stamp duty for effecting such transfer would not arise

In the instant case², the assessee company filed its original return declaring a loss of Rs. 591 crores and subsequently revised the return and the loss to Rs. 581 crores.

The case was selected for scrutiny and notices under Section 143(2) and 142(1) of the Act were issued and the respondent assessee was heard and the assessing officer completed the assessment under Section 143(3) of the Act, making an addition of Rs. 5.48 crores being capital gain on transfer of land to the National Highways Authority of India

² **Principal Commissioner of Income-tax vs. Durgapur Projects Ltd. (High Court of Calcutta) [2023]**

(NHAI) and also initiated penalty proceedings under Section 271(1)(c) of the Act.

The assessee preferred appeal before the Commissioner of Income Tax (Appeals) wherein the CIT(A) held that the assessing officer was not justified in invoking Section 50C of the Act on the land which was compulsorily acquired for NHAI and directed to re-compute the capital gains without applying Section 50C of the said Act.

The Hon'ble Court held that what was to be noted in the instant case was that the transfer of the land was not on account of the agreement between the parties, but it was the case of the compulsory acquisition under the provisions of the 2013 Act. Therefore, the transaction could be treated to be a transaction between two private parties where there may be room to suspect the correct valuation and the apparent sale consideration which was reflected in the sale documents. It was common knowledge that when compensation is determined by the authorities under the said Act, it was invariably lesser than the market value of the property as the determination is done in a particular manner by taking note of several factors. This was precisely the reason that the Act provides for an appellate remedy and further remedies in case the erstwhile land owner is of the view that the compensation paid/offered was inadequate. In this background, what is pertinent is the purpose behind enacting Section 50C of the Act. This provision had been designed to control the transactions where the correct market value was not mentioned and there was suppression of the correct value by the parties to the transactions. As in the instant case, it was an acquisition of land by the Government by way of compulsory acquisition, the appellant department cannot be heard to say that there was suppression of the value and

consequently the question of invoking Section 50C of the Act did not arise.

3. Section 12AA:

Where assessee-trust filed application for registration under section 12AA after amended rule 17A came into effect, assessee was not required to file any original copy of documents rather it had to furnish only self-certified copy/instrument of documents along with application for purpose of verification by Commissioner (Exemption)

In the instant case³, the assessee was a charitable society engaged in promoting nationality, education, personality development of students without any discrimination of caste, creed and sex. It filed an application seeking registration under section 12AA of the Act.

The assessee filed an online application in Form No. 10A. The assessee-society was issued a letter/notice requesting to submit certain documents/explanations and also to produce original RC/MOA for verification. Due to some personal reason, the assessee-society was unable to comply with the aforesaid requirement. Therefore, it was issued a letter/notice again, in compliance to which, the assessee attended and furnished details. The assessee was requested to furnish the audited Balance Sheet & I/E A/c for F.Y. 2018-19 & F.Y.2019-20, premises temple photographs, clarification on rent receipt, certified copies of trust deed for verification.

The Commissioner (Exemptions) disallowed the same on the ground that the assessee had failed to

³ [Radheyshyam Mandir Trust vs. Commissioner of Income-tax \(Exemption\) \(ITAT Jaipur\) \[2023\]](#)

produce original relevant documentation in support of its claim of registration along with application. The assessee contended that as per the new rule 17A, the assessee was only required to furnish self-attested/self-certified copies of every document, which it had duly submitted along with application for registration.

It was noted that the assessee carried out charitable activities in accordance with objects of trust deed. Also, as per the amended rule 17A which was applicable in case of the assessee, it was not required to file any original copy of documents - rather self-certified copy/instrument was sufficient for the purpose of verification by Commissioner (Exemptions).

Therefore, the assessee was to be allowed registration under section 12AA.

4. Section 43B:

Non-obstante clause u/s 43B wouldn't dilute employer's liability to deposit employee's contribution by due date

In the instant case⁴, the assessee is a private limited company and filed its return of income for the A.Y. 2018-19 which was processed U/s 143(1) of the IT Act and a disallowance of Rs. 5,28,162/- was made towards employee's contribution towards ESI and PF.

Being aggrieved by the order issued U/s 154 of the IT Act, the assessee preferred an appeal before the Id. CIT(A). The assessee filed complete details of the entire payments i.e. employee's PF & ESI contribution paid before the due date of filing of return of income.

On appeal, the Id. CIT(A)/ NFAC has confirmed the disallowance made U/s 143(1) on account of assessee's failure to pay the employee's contribution of PF/ESI within the prescribed due dates as per Section 36(1)(va) of the Act.

Being aggrieved by the CIT(A) order, the assessee preferred an appeal before the Hon'ble ITAT.

The Hon'ble ITAT considered the contentions and perused the orders of the authorities and the material available on record. They submitted that now this issue had been decided by Hon'ble Supreme Court in favor of revenue in its recent decision in bunch of appeals titled as Checkmate Services P. Ltd. vs. CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022). In this decision, it was noted by Hon'ble Court that was divergent of opinion amongst various Hon'ble High Courts viz. High Courts of Bombay, Himachal Pradesh, Calcutta, Guwahati and Delhi favoring the interpretation beneficial to the assessee on one hand whereas High Courts of Kerala and Gujarat favoring interpretation in favour of the Revenue on the other hand. Taking note of legislative history, the matter has finally been put to rest by Hon'ble Court in the revenue's favor.

It was thus held that there was a marked difference between the nature and character of assessee-employer's contribution and amounts retained by assessee from out of employee's income by way of deduction wherein one is liability to be paid by employer and second is deemed income as per section 2(24)(x) which is held in trust by assessee-employer, thus, said marked difference was to be borne while interpreting obligation of assessee-employer under section 43B. If the same is not deposited as per the mandate of section 36(1)(va), deduction of same would not be available to assessee.

⁴ [Ocean Exim India \(P.\) Ltd. vs. ITO \(ITAT Jaipur\) \[2023\]](#)

For assessment years prior to 2021-22, the non obstante clause under section 43B could not apply in case of amounts which were held in trust as was case of employee's contribution which were deducted from their income and was not part assessee-employer's income, thus, said clause would not absolve assessee-employer from its liability to deposit employee's contribution on or before due date as a condition for deduction.

Respectfully following the recent decision of Hon'ble Supreme Court in case of *Checkmate Services P. Ltd Vs. CIT (Civil appeal No. 2833 of 2016 dated 12.10.2022)* and considering the findings and adjudication, the impugned disallowances stood confirmed. In the result, the appeal of the assessee was dismissed.