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Direct Tax Newsletter

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**CBDT Condones Delay in Filing of Form 10-IC
for AY 2021-22 If ITR Was Filed Within Due
Date**

Circular No. 19/2023, dated 23-10-2023

1. Sec. 80G Approval Rightly Rejected as Trust Wants to Construct Building Diverging from Granted Charitable Objectives

In the instant case¹, the assessee had been given registration under section 12AA. It applied for approval under section 80G. The application filed by the assessee was rejected by the Commissioner (Exemption) on the ground that the assessee's true intention was primarily to construct a building, with no clear alignment with its stated charitable objectives for which section 12AA registration was granted.

Notably, the assessee accumulated substantial funds for building construction, even though the funding was supposed to come from MPLADS and the construction was to be carried out by the Government of Haryana. Moreover, the assessee failed to provide evidence that the funds raised were transferred to the Government of Haryana as intended. Consequently, the Commissioner rejected the approval under section 80G.

Aggrieved by the order, the assessee filed an appeal to the Delhi Tribunal.

The Tribunal held that the Commissioner (Exemption) while deciding the application for approval under section 80G, found that as per the agreement between the assessee and the Government of Haryana, the Government shall construct Patel Gurjar Bhawan. On the recommendation of the Member of Parliament as per the guidelines of the Member of Parliament Local Area Development Scheme(MPLADS), the

constructed building was to be handed over to the assessee.

By examining the clauses of the agreement, the CIT found that the expenditure for the building was to be financed from the MPLAD Scheme, and construction was to be undertaken by the Government of Haryana till the building was handed over to the Society.

Even though funding was supposed to come from the Member of Parliament local area development scheme and construction was to be carried out by the Government of Haryana, the assessee's true intention was primarily to construct a building with no clear alignment with its charitable objectives.

Accordingly, there was no error or infirmity in the Commissioner's order (Exemption) rejecting the application for approval under section 80G.

2. Interest on Borrowed Capital Paid by Co. Engaged Construction & Leasing of Property is Deduction u/s 24(b)

In the instant case², the assessee-company engaged in commercial leasing, including IT Park, an IT/ITES SEZ, and construction of residential flats. The assessee had claimed interest expenditure under section 24(b) on capital borrowed for the acquisition or construction of property. The Assessing Officer passed an assessment order under section 143(3) accepting the assessee's claim.

The Principal Commissioner initiated revision proceedings by invoking 3rd Proviso to section 24(b). He contended that the assessee had not submitted

¹ Gurjar Kalyan Parishad v. Commissioner of Income-tax (Exemption) (Delhi-Trib.) [2023]

² Manjri Stud Farm (P.) Ltd. v. ACIT - (Mumbai-Trib.) [2023]

an Interest Certificate from the bank during the assessment proceedings. Further, the assessee had furnished loan agreements for term loans and overdraft facilities and nowhere in their documents was it stated that these loans were for the acquisition or construction of properties in connection with which rental income was received.

Aggrieved-assessee filed an appeal to the Mumbai Tribunal.

The Tribunal held that the Proviso of section 24(b) stated, “where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital”. This Proviso is directly linked to the 1st and 2nd Proviso.

The first Proviso stated that with respect to the property referred to in section 23(2), which is the property consisting of a house or part of the house which is in the occupation of the owner for his own residence or it cannot be occupied by the owner because of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him. In such a situation, the house’s annual value shall be considered NIL. The first Proviso relates explicitly to the situation discussed in section 23(2), where the individual can claim a deduction not exceeding Rs. 30,000.

The second Proviso limits the deduction amount to Rs. 2 lakhs wherein the assessee has acquired or constructed with the borrowed capital after 1st April 1999.

The third Proviso is also closely linked to Proviso 1 and 2 and gives certain contingencies to claim the deduction mentioned in Proviso 1 and 2. Therefore, all the Proviso discussed in section 24(b) are related

to an individual who intends to claim a deduction under section 23(2).

Consequently, the interpretation of the third Proviso to section 24(b) in isolation is not proper, and the findings of the PCIT under section 263 could not be agreed with.

Moreover, even if it were assumed that the Assessing Officer did not validate the claim put forth by the taxpayer, the assessment order could be considered as erroneous. Still, it could not be said to be prejudicial to the interest of revenue. Accordingly, both criteria outlined in section 263 were not met and as a result, revision under section 263 should be nullified.

3. Compensation Paid to Seller for Waiving Off Its Absolute Right from Land to be Treated as Cost of Improvement

In the instant case³, the assessee and the co-owner sold 5% of the land, and the remaining 95% of land was transferred to the partnership firm as the partner’s capital contribution at a certain amount. Assessee, against the sale of land and transfer of land to the partnership firm, claimed a certain amount incurred as cost of improvement, including compensation paid to a person for waiving off its absolute right from land in favour of the assessee.

Assessing Officer (AO) noted that the assessee failed to file a copy of the ITR of the third party and failed to demonstrate that said party had offered income on account of compensation paid by the assessee. Thus, he disallowed the claim of index cost of improvement on account of compensation and stamp duty charges.

³ **Nareshbhai Ishwardas Patel v. ITO - [2023] (Ahmedabad-Trib.)- [2023]**

The matter reached before the Ahmedabad Tribunal.

The Tribunal held that it was noted that the lower authority failed to point out any infirmity in evidence made available by the assessee regarding payment of compensation. The assessee's claim was rejected merely because such documents did not contain details of payment and based on the fact that the seller party had not offered income on receipt of such compensation.

Further, revenue had accepted an identical claim of cost of improvement on account of compensation made by the co-owner, i.e., the brother of the assessee, in the assessment framed under section 143(3). Thus, the claim of the cost of an improvement on account of compensation paid by the assessee was to be allowed.

4. AO Needs Evidence to Label Share Sale as Bogus Proving Assessee Converted Unaccounted Funds Through Fictitious Loss

In the instant case⁴, the Assessing Officer (AO) received information from DDIT (Inv) that assessee had entered into trading of penny stock of two companies and claimed bogus loss. As a result, a notice under section 148 was issued upon the assessee.

Later, AO passed an order and made an addition to an account of alleged bogus loss on the sale of shares. On appeal, the Commissioner (Appeals) partly allowed the appeal of the assessee. However, ITAT deleted the addition.

Aggrieved-AO filed the instant appeal before the High Court.

The High Court held that the Tribunal found that assessee had discharged the initial burden cast upon it under provisions of section 68. Shares of companies were purchased online, payments were made through banking channels, and shares were dematerialized. Additionally, the shares were transferred from the dematerialized account and received consideration through legitimate banking channels.

AO did not have any independent source or evidence to show an agreement between the assessee and any other party to convert unaccounted money by taking the fictitious loss. The decision of AO was unsupported by any material on record, and the finding was purely on an assumption basis. Thus, no substantial question of law arose from the order of the Tribunal, and the same was to be upheld.

⁴ **PCIT v. Champalal Gopiram Agarwal (High Court of Gujarat) [2023]**