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Direct Tax Newsletter

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- **CBDT Lists Down Reasons for Delayed Processing of Income Tax Returns**

Press Release, dated 05-09-2023

1. CIT Can't Deny Sec. 12AA Registration to 'Tennis Association' Based on a Projection of What Might Happen in Future

In the instant case¹, the assessee-association applied for registration as a charitable trust under section 12AA. The primary object of the assessee association was to promote the game of tennis and all other sporting activities by encouraging young persons, providing coaching facilities and organizing tournaments.

The Commissioner rejected the application because the assessee was looking to raise funds from the sponsors and donors in the interest of the game. It would be quite possible that a huge amount of commercial consideration would take effect through advertisement, ticket selling, broadcasting right over the game, etc. Thus, the genuine activities of the association would not be considered as "charity" under the ambit of section 2(15).

On appeal, the Tribunal reversed the order of the CIT, and the matter reached the Orissa High Court.

The High Court held that the Commissioner rejected the application for registration because of future contingency. It was held that section 12AA, by the sub-sections therein, provides for cancellation of the registration, and rejection of the application for registration based on a projection of what might

happen in the future could not be sustained. Accordingly, the assessee's appeal was allowed.

2. HC Can't Admit an Appeal Without Formulating Any Substantial Question of Law

In the instant case², during assessment proceedings, the Assessing Officer (AO) added to the assessee's income under section 68 regarding loans/advances received from eight persons. The additions were made because the assessee could not establish the identity, creditworthiness and genuineness of said persons and transactions.

However, the additions were deleted during the appellate proceedings. The matter reached the Delhi High Court. The Court admitted the appeal and held that the mere establishment of identity and the fact that amounts had been transferred through cheque payments did not mean that transactions were genuine. Accordingly, the HC restored additions made by the AO.

The assessee, aggrieved by the judgment passed by the High Court of Delhi, filed an appeal to the Supreme Court contending that the appeal filed under Section 260A of the Income Tax Act, 1961 was disposed of on merits without being argued on the substantial question of law.

The Supreme Court held that the High Court had not followed the procedure contemplated under Section 260A. It should be noted that an appeal before the High Court is maintainable only on a substantial question of law (not a question of fact or only a question of law).

¹ CIT v. Cuttack District Tennis Association - [2023] (Orissa High Court) [2023]

² Bikram Singh v. Principal Commissioner of Income Tax (SC) [2023]

The High Court, when entertaining such an appeal, must formulate that question and admit the appeal.

Thereafter, the respondent must also be heard on the question so formulated. Consequently, the matter must be disposed of depending on whether the substantial question of law must be answered for or against either of the parties.

In the instant case, it was found that the High Court did not formulate any substantial question of law when admitting the appeal. Instead, the appeal was heard on merits.

The Supreme Court held that the High Court has either to admit or not admit the appeal. If the High Court admits the appeal, then substantial question(s) of law have to be framed, and the respondent put on notice of such substantial question(s) of law. On the contrary, the appeal must be dismissed if the High Court believes that no substantial question of law arises.

Therefore, the matter was to be remanded to the High Court for reconsideration of the appeal filed by revenue having regard to essentials of section 260A.

3. Jurisdictional Issue Raised in a Writ Challenging Competence of Exercise of Statutory Power is Question of Law

In the instant case³, assessing Officer (AO) sought to reopen the assessment for the relevant assessment year. The assessee challenged notice by filing an instant writ petition. The assessee submitted that since there was no reason to believe, reopening the proceedings by the AO was without jurisdiction.

The AO raised a preliminary objection to the maintainability of the writ petition on the ground that an alternate statutory remedy was available to the assessee by way of an appeal. It was submitted that since such statutory remedy was available to the assessee, there was no reason to entertain the writ petition in the exercise of extraordinary jurisdiction.

The Bombay High Court held that an objection to the maintainability of a writ petition would go to the root of the matter as the Court would be incapable of receiving the lis for adjudication. However, the question of entertainability is within the realm of discretion of the Court since writ remedy is discretionary in nature.

When a jurisdictional issue is raised in a writ petition challenging the competence of exercise of statutory power in question, the same being a pure question of law, it can be considered in the exercise of writ jurisdiction.

In the instant case, the assessee has raised a challenge to initiating proceedings and exercising power under section 148 by urging that the statutory requirements prescribed by section 148 have not been satisfied. Since the jurisdiction of the ITO of initiating the proceedings itself is under challenge, the writ petition would be maintainable. In light of the challenge raised, it cannot be said that the writ petition is not maintainable.

4. No Sec. 263 Revision if View Taken by AO Was Plausible View Supported by CBDT Circular No. 16/2017

³ **Modern Living Solutions (P.) Ltd. V. Income-tax Officer - [2023] (Bombay)**

In the instant case⁴, assessee-firm was engaged in the business of letting out properties. Since income earned was from letting out properties along with various services to lessees, the income was offered for tax under the head income from business and profession. The very basis for partnership was to carry on business. The partnership deed also categorically provided for carrying on the business of leasing, managing, and maintaining the property.

During the assessment proceedings, a detailed questionnaire was issued by the Assessing Officer (AO) seeking pinpointed queries about the nature of business activities and verification of receipts. The nature of the business was explained, the partnership deed was submitted, and a complete explanation was rendered regarding income falling under the head 'income from business and profession'.

Reference was also drawn to CBDT's Circular No. 16/2017 dated 25-4-2017. On being convinced of the facts and legal position, AO accepted the assessee's explanation and assessed the income under the head 'income from business and profession.'

However, in the exercise of his jurisdictional power under section 263, the commissioner held that income from property under reference was in the nature of rental income and not business income.

Aggrieved-assessee filed an appeal to the Jaipur Tribunal.

The Tribunal held that the scope of revision jurisdiction under section 263 is very specific, limited, and different from appellate jurisdiction.

The law contained in section 263 does not allow the commissioner to impose his view over the judicious view adopted by the AO unless the view adopted by the AO is established to be not at all sustainable in law.

In the instant case, the view of AO was also supported by the CBDT Circular. AO was also duty-bound to follow the directions of CBDT, more so when specifically brought to his notice by the assessee during the assessment proceedings.

After adequate enquiry, AO has taken a reasonable view, and accordingly, the revision under section 263 is not permissible merely because the commissioner may entertain a different view on the issue. The stand adopted by AO was plausibly supported by the CBDT Circular and, therefore, cannot be said to be erroneous in terms of the provisions of section 263.

⁴ **Agrani Buildestate v. Principal Commissioner of Income-tax - [2023] (Jaipur-Trib.)**