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## Direct Tax Newsletter

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- **CBDT Notifies 'Uttar Pradesh Expressways Industrial Development Authority' for Sec. 10(46) Exemption**

**1. ITAT Directs AO to Allow Sec. 54B Deduction as Registration of New Land was Pending Due to Court Permission**

In the instant case<sup>1</sup>, the assessee claimed deduction under section 54B on transferring agricultural land and purchased another parcel of land. The Assessing Officer (AO) denied benefit under section 54B because the assessee could not furnish a purchase deed for so-called new agricultural land.

In response, the assessee submitted the reason for the non-furnishing purchase return that two of the co-sellers were minor at the time of purchase of the said land, due to which application had been filed in the appropriate Court for permission to purchase land and sell land in their name.

On appeal, CIT(A) confirmed the action of AO. The matter then reached the Surat Tribunal.

The Tribunal held that the registration of the purchased land was pending due to Court permission because two of the co-sellers were minors at the time of purchase of the said land. However, at present, both have become major, and they have executed a notarized declaration of accepting the transactions and confirmed the enforceability of the documents in the form of a Satakhat/sale agreement and possession letter signed by their guardians on their behalf. Thus, the document on which the assessee had purchased was valid and enforceable in law.

The assessee had claimed the amount already paid for the purchase of new agricultural land, which the above parties confirm, and also confirmed the enforceable transaction and documentation in the assessee's favour. Thus, the assessee's claim under section 54B was allowable as the transaction was enforceable in the eyes of the law.

Even in normal circumstances, executing an agreement to sell immovable property creates a right in personam in favour of the transferee. When such a right is created, the transferor is restrained from selling the said property to someone else because the transferee has a legitimate right to enforce the specific performance of said agreement to sell.

Therefore, the Assessing officer was directed to give the assessee the benefit of deduction under section 54B.

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<sup>1</sup> **Kristina Nathabhai Krichchan vs. Deputy Commissioner of Income-tax - [2023] (Surat-Trib.)**

## **2. ITAT Restricts Sec. 69A Additions as It Was Impossible for NRI to Furnish Evidence for Cash Gifts Received on Marriage**

In the instant case<sup>2</sup>, the assessee- NRI, made a cash deposit of Rs. 1 crore in his bank account during the demonetization period. On being enquired by the Assessing Officer (AO), the assessee claimed that the amount was received in connection with his marriage celebrated on 7-12-2015 and claimed the same as exempt being gifts received during marriage under the proviso to section 56(1)(vii)(c).

The AO noted that the assessee had not furnished any material evidence to substantiate that he had received the gift of Rs. 1 crore during his wedding other than the wedding invitation card to prove the genuineness of his claim. Accordingly, AO made the addition of Rs. 1 crore as unexplained money as per the provisions of section 69A. On appeal, CIT(A) held that the assessee was an NRI, and it was nearly impossible for him to prove gifts received on the occasion of marriage. Thus, CIT(A) restricted additions to Rs. 70 lakh. The assessee filed a further appeal before the Chennai Tribunal. The Tribunal held that the assessee himself deposited cash in his bank account and tried to explain the sources through the cash gifts received during the occasion of marriage in December 2015. However, it rejected assessee's contention that cash deposits made in the accounts can't be treated as not income because he made such deposit during the demonetization period. The deeming provisions of section 69A are clearly applicable.

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<sup>2</sup> **Karthick Natarajan v. Deputy Commissioner of Income-tax, International Taxation - [2023] (Chennai-Trib.)**

The assessee argued that a reasonable deduction on the basis of reasonable estimation should be made, but he could not produce any sort of evidence to substantiate his claim, either the names or their address or anything relating to the gift received in cash.

There was no direct evidence available from the assessee to substantiate his claim, but going through the customary system in Indian society, the observations of CIT(A) that no economic transaction can be divorced from the underlying social-cultural factors is to be agreed with. It is customary in Indian society and according to status that one receives gifts in marriage.

Hence, a further estimation was made, and Rs. 20 Lakhs was deleted and subsequently, Rs. 50 Lakhs was treated as unexplained money under section 69A.

## **3. No TDS on Compensation Received u/s 96 of LARR Act Even if Land was Non-agricultural Land**

In the instant case<sup>3</sup>, the Assessee's land was acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act). Compensation, along with interest, was fixed with respect to such acquisition. Subsequently, the Principal District and Sessions Judge directed withholding of 30% of the amount on the accrued interest in accordance with section 194LA.

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<sup>3</sup> **Sharanappa v. Deputy Commissioner - [2023] (Karnataka)**

Aggrieved by the order, the assessee filed a writ petition to the Karnataka High Court.

The Court held that section 194LA requires any person responsible for paying to the resident any sum being in the nature of compensation or enhanced compensation, or consideration or enhanced consideration on account of compulsory acquisition of immovable property other than agricultural land at the time of payment of such sum, has to deduct an amount equivalent to 10% as income tax.

Further, the second proviso to section 194LA clearly makes out an exemption from the levy of income tax in cases when the land has been acquired, and compensation is covered under section 96 of the LARR Act. The proviso does not make any difference between agricultural or non-agricultural land.

Section 96 of the Act of 2013 makes it abundantly clear that no income tax or stamp duty shall be levied on any award or agreement made under the Act except under section 46, which relates to the purchase of land through private negotiations, which necessarily means otherwise than through acquisition.

Thus, any land acquired and compensation paid as per section 96 of the LARR Act would not attract any income tax. When the compensation itself is exempted from income tax, the question of deducting tax at source on such exempted income would also not arise. Hence, as long as the award is made under the LARR Act, the compensation paid would not be liable for any tax.

#### **4. CBDT to Reconsider Condonation Request if Refusal Results in Cause of Justice Being Defeated**

In the instant case<sup>4</sup>, the Assessee, was engaged in executing the projects launched by the Municipal Corporation of Greater Mumbai (MCGM). For the assessment year 2016-17, the assessee filed its return of income belatedly with a delay of 43 days. Later, the assessee realized that it inadvertently filed the Return of Income as AOP instead of firm. Assessee submitted an income tax return under section 119(2)(b) and sought condonation of delay in filing the return. However, the request for condonation of delay was rejected.

Aggrieved by the order, the assessee filed a writ petition to the Bombay High Court.

The High Court held that the principles of natural justice would require the assessee to be provided the statement submitted by the field authorities so that the assessee could have effectively responded. Moreover, in its petition, the assessee stated the partners were all available in India, but the key person whom the joint venture partners entrusted to advise on the filing of ROI was out of the country. These were issues which certainly the assessee could have been called upon to appear personally or through videoconferencing to explain, which had not been done.

Further, the impugned order recorded that the assessee failed to prove the genuine hardship. In the case at hand, the applicant was seeking a refund of a large amount of Rs. 82,13,340. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated.

The authorities fail to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. It was viewed that the authority's approach should be justice-oriented to

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<sup>4</sup> **R.K. Madhani Prakash Engineers J V v. Union of India - [2023] (Bombay)**

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advance the cause of justice. If the refund is legitimately due to the applicant, the mere delay should not defeat the claim for refund.

Therefore, the Board was directed to decide the question of hardship and correctness and genuineness of the refund claim in light of the observations made above.