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Tax Digest

- **Recent case laws**

September 19, 2022

- ***CBDT issues additional guidelines on deduction of tax at source u/s 194R***

Link to the Circular:

https://incometaxindia.gov.in/communications/circular/circular-no-18-2022.pdf

Direct Tax Updates

1. Section-68 "Cash Credits.":

No additions under Section 68 on account of cash deposited post demonetization if same represented sale proceeds

Where Assessing Officer made addition under section 68 on account of cash deposited by assessee in its two bank account post demonetization, since said cash deposit was towards assessee's sale proceeds which was already offered to tax by assessee and admitted by revenue as revenue receipt, impugned addition made under section 68, resulting in double taxation, were liable to be deleted

In the instant case[1], the assesse-individual deals in beedi, tea powder and pan masala. In the course of assessment, AO noticed that there were several cash deposits in the two bank accounts of the assessee. Out of the aforesaid cash deposits the deposits that was made of bank notes that were declared as not legal tender owing to demonetization of currency.

The AO observed that as per the cash book the closing balance as on 08.11.2016 was Rs. 4.90 lakh. After reducing Rs. 4.90 lakh from total deposit of Rs. 14.50 lakh, the balance is Rs. 9.60 lakh. Out of Rs. 9.60 lakh, the old Specified Bank Notes are totaling to Rs. 4.50 lakh which stands unexplained. Hence, the same was treated as unexplained cash credits under Section 68 in the books of account of the assessee and the same is required to be brought to tax. Accordingly, a sum of Rs. 4.50 lakh was brought to tax under Section 68.

Aggrieved by the AO's order, the assessee preferred an appeal before the Ld. CIT(A), who observed and held that the cash deposits in question was the cash collection from the small and medium class traders out of the business of the assessee. Old demonetized notes could be accepted till 30.12.2016 and a payee can continue to accept old demonetized notes of Rs. 500 or 1000 since those notes can be accepted as valid tender and there was no prohibition or lawful direction not to pay or accept old notes. The Assessee relied on the decision of *ACIT v. Dewas Soya Ltd. (ITAT, Indore) (2012)*, wherein on identical facts of the case it was held that the claim of the assessee that such addition resulted into double taxation of the same income in the same year because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added under Section 68.

The CIT(A) did not accept the contention of the assessee and held that once the Rs. 500 and Rs. 1,000 notes are declared as not valid legal tender on 09.11.2016, the assessee cannot accept cash payments after 09.11.2016 that are demonetized and doing so was patently illegal.

Thereafter the assessee preferred a further appeal before Hon'ble Tribunal who held that the AO and CIT(A) accepted the fact that cash receipts were nothing but sale proceeds in the business of the assessee. The sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under Section 68 that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.

Tribunal held that, when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient

[1] **Anantpur Kalpana vs. ITO (ITAT Bangalore) [2022]**

stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition under Section 68 again. The addition made was deleted.

2. Section-28 "Profit and gains of business or profession":

Remuneration/interest can't be taxed in hands of partners relying upon deed if same wasn't claimed by firm

Where assessee was a partner in a firm and Assessing Officer reopened assessment on grounds that she failed to show remuneration and interest on capital received from partnership firm in return of income filed, since Tribunal while deciding appeal of aforesaid partnership firm held that there was no good ground to tax remuneration and interest on capital in hands of partners of firm, nothing survived in instant matter so far as reopening of assessment of assessee was concerned

In the instant case[2], with the writ application under Article 226 of the Constitution of India, the writ applicant/an assessee seeks to challenge the Notice issued by the Income Tax Department dated 31.03.2018 under Section 148 of the Income Tax Act, 1961 (for short 'the Act, 1961) for reopening of the assessment under Section 147 of the Act with respect to A.Y. 2011-12.

It appears from the reasons recorded by the Income Tax Officer that the department intends to reopen the assessment on the ground that the writ applicant herein as one of the partners of the partnership firm, failed to show the remuneration and interest received from the partnership firm when the return of the writ applicant was processed under Section 143(1) of the Act on 06.03.2012. The case of the department is that the total remuneration and interest paid is to the tune of Rs.75,11,147/-. Each of the partners have a share of 50% in the partnership firm. The writ applicant herein has been shown as a "Working Partner". The writ applicant filed her objections dated 28.10.2018 pointing out that she had not received any income in the form of remuneration and interest from the partnership firm and therefore, there was no question of adding some income or showing such income in the return of income.

The objections raised by the writ applicant came to be disposed of vide the order dated 01.11.2018 on the ground that the writ applicant/assessee had received share of profit from the firm and such share received by the writ applicant/assessee as per the partnership deed would include the remuneration and interest which has not been debited from the profit and loss account of the firm.

The ITAT adjudicated the controversy as regards the deduction of remuneration/interest on the partners capital not claimed by the assessee i.e. the partnership firm in its profit and loss account. The Tribunal took notice of the fact that the CIT Appeals had directed to tax the amount of remuneration/interest on the partners capital account in the hands of the partners. The AO had allowed the claim of the deduction for the remuneration/interest on the partners capital account however, the same was added back by the

[2] **Mamta Bhavesh Deva Vs. ITO (High Court of Gujarat) [2022]**

AO on the ground that it was not claimed as a deduction in the profit and loss account. The CIT Appeals directed to delete the addition made in the hands of the firm and further directed to tax the same in the hands of the partner of the firm. The aforesaid was not approved by the Tribunal taking the view that there was no good ground to tax the remuneration/interest on the capital in the hands of the partners and the CIT(Appeal) could be said to have exceeded its jurisdiction by issuing such directions to the AO for the dispute which was not arising from the order of the AO.

In view of such findings recorded by the Appellate Tribunal, nothing survives in the present matter so far as the reopening of the assessment of the partner of the partnership firm is concerned. At this stage, Mr. Soparkar, pointed out that a Coordinate Bench of this Court while issuing Notice vide order dated 28.11.2018, had directed by way of ad-interim relief that the final order shall not be passed without the permission of the Court. However, the final order of assessment ultimately came to be passed. In such circumstances, the Co-ordinate Bench vide order dated 04.10.2021 directed that there shall be no coercive action inclusive of penalty in connection with the order of the assessment. In view of the aforesaid, even the final order of assessment will have to be quashed and set aside.

In the result, this writ application succeed and is hereby allowed. The impugned Notice dated 31.03.2018, Annexure – A to this writ application, is hereby quashed and set aside. The final order of assessment dated 25.09.2021 is also hereby quashed and set aside.

3. Section-37(1) "Business Expenditure":

i. Where assessee incurred expenditure for giving valuable gifts to certain parties and claimed it as sales promotion expenditure and had shown bills and vouchers for purchases and all details had been maintained scientifically, expenditure incurred by assessee could not have been disallowed on ad hoc basis

ii. Where assessee-firm claimed travelling expenses, however, Assessing Officer found that out of said expenses so claimed, a certain sum had been used for personal trip of a partner, said expenditure could not have been allowed to assessee

i. In the instant case[3], the assessee had debited a sum towards sales promotion expenses and claimed same in its profit and loss account. The Assessing Officer found that assessee had given some expensive gifts to certain parties and on working out the amount, disallowed it out of the total claim made by assessee on grounds that the assessee failed to give a list of persons to whom such valuable gifts had been made for business promotion. The assessee contended that in order to maintain secrecy of its line of business, it was not incumbent upon him to disclose personal details of recipients, and it ad sufficiently shown bills and vouchers for purchases and all details had been maintained scientifically. Further, an estimation of disallowance could only be made, if there were some lapses in details maintained by assessee. Therefore, there was no reason to disallow expenditure on ad hoc basis and same was prayed

[3] **Assistant Commissioner of Income Tax Vs Armee Infotech (ITAT Ahmedabad) [2022]**

to be deleted. The Hon'ble Tribual o0n hearing the facts and circumstances of the case held that there was no justification to interfere in the matter. Similar expenditure was made and allowed by the AO in earlier years, and there seemed no reason to disallow it now. The assessee is a well organized business house, who has achieved turnover of more than Rs. 102 crores; meaning thereby, its affairs must have been managed in professional manner, where complete details might have been maintained. Thus, this ad-hoc disallowance was not called for and deleted.

ii. In the same case, the assessee had debited total expenses of Rs. 73,38,974/- towards travelling expenses. He found that out of total expenses a sum of Rs. 14,29,324/-were incurred for personal trip of Shri Kirit Patel to South Africa. He also discussed that expenditure incurred for the visit of Smt.Ami Patel, partner to Ooty was also of personal nature. In this way, he worked out a disallowance of Rs. 17,74,045/-. Appeal to the CIT(A) did not bring any relief to the assessee.

The Hon'ble Tribunal allowed the expenses partly as they could be clearly demonstrated to be incurred for the business. However, for the rest of the expenditure, the assessee failed to demonstrate that it was also incurred for the purpose of business. It was held that if it was unearthed by the AO that in certain expenditure, an element of personal nature was involved, then such expenditure cannot be allowed to the assessee. Hence, the expenditure was disallowed.

4. Section-54F "Capital Gains-Exemption":

Where sale deed is executed in favour of assessee within a period of three years from date of transfer of shares but the payments are made prior to one year before date of such transfer, then the assessee is entitled to claim exemption under section 54F

In the instant case[4], the daughter of the assessee had entered into an agreement for purchase of a flat on 30-12-2006 with the builder. On 21-8-2008, the assessee transferred his shares held by him in a company on which long term capital gain was offered. Thereafter, under an agreement, on 18-3-2009, the flat was transferred in the name of the assessee and thereafter a registered sale deed was executed in favour of the assessee on 28-3-2011. The assessee had acquired the residential property i.e. the flat under an agreement to sell in respect of undivided land and an agreement to build; thus, the instant case was a case of construction of a residential house. The sale deed was executed in favour of the assessee within a period of three years from the date of transfer of shares on 28-3-2011, i.e., prior to expiry of three years from the date of transfer of shares on 21-8-2008. Therefore, the authorities under the Act ought to have examined the claim of the assessee whether or not the assessee had constructed a residential house within a period of three years from the date of transfer of original property. It is also pertinent to note that exemption under section 54 is dependent on the date of acquisition of the property and not on the date of payment made in respect of such property. It is also noteworthy to mention that to claim an exemption under section 54F, it is not necessary that the same sale consideration should be used for construction of a new house property. It is also noteworthy that section 54F is a beneficial provision, which has been enacted with an object to promote

[4] **M. George Joseph Vs Deputy Commissioner of Income Tax, Bangalore (High Court of Karnataka) [2022]**

investment in housing and enable the assessee to save tax on capital gains. It is a well settled rule of interpretation that benevolent provision should be interpreted liberally bearing in mind the object for which the provision is enacted. Thus, from narration of facts, it is evident that the assessee had complied with the conditions stipulated under section 54F and was entitled for exemption. Therefore, the finding recorded by the Tribunal that since payments were made prior to one year before the date of transfer of shares and, therefore, the assessee is not entitled to claim exemption under section 54F, cannot but be termed as perverse. For the aforementioned reasons, the substantial question of law is answered in the negative and in favour of assessee.