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Tax Digest

- Recent case laws

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CBDT Releases Guidelines for Compulsory Selection of Returns for Complete Scrutiny During FY 2023-24

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The CBDT has laid down the parameters for selection & conducting assessment in the following circumstances:

- a) Cases pertaining to survey under section 133A;
- b) Cases pertaining to Search and Seizure;
- c) Cases where notice under section 142(1), calling for return, have been issued or no returns have been furnished;
- d) Cases where notice is issued under Section 148;
- e) Cases related to registration/approval under sections 12A, 35, 10(23C), etc.;
- f) Cases involving additions in earlier AYs on a recurring issue of law and/or fact; and
- g) Cases related to specific information regarding tax evasion.

1. ITAT Upheld Validity of Assessment Order as It Was Handed Over to Postal Dept. Within Limitation Period

In the instant case¹, the Assessing Officer (AO) completed the assessment and issued an assessment order for the relevant assessment year bearing the date as 30.12.2011 under section 153C. The assessee contended that he received the assessment order on 03.01.2012, which was dispatched only on 02.01.2012 after the limitation period expired on 31.12.2011.

On appeal, CIT(A) upheld the order of AO and the matter reached before the Indore Tribunal.

The Tribunal held that under the Buy Now Pay Later (BNPL) scheme, the post office provides the facility for booking business parcels/speed posts at the place where customers give bulk business. Under the scheme, the post office provides the facility to collect the articles from the customers' businesses, which are handed over to the authorized post office official.

The booking general contains preprinted speed post article numbers in triplicate copies; therefore, there is no scope for any manipulation on the part of the customers while handing over the articles in the list prepared under the booking general. Further, the post office provides a corresponding sticker with a barcode and speed post article number, which is pasted on the envelope of the articles when handed over to the authorized person. The booking article was handed over to the authorized person of the post office and was duly acknowledged as per the authorized person's seal, date, and signature.

In the instant case, the AO produced a copy of the booking ledger, which contained the details of the assessment order and respective speed post articles. It was noted that the assessment order of

the assessee was collected by the authorized person of the business post centres on 30.12.2011. Thus, it was evident from the record that the AO handed over the assessment order to the postal department's authorized person within the limitation period.

In case the authorized person of the postal department takes the speed post articles to the department and registers them on the system on 02.01.2012, it will not alter the fact that the assessment order had already gone out of the control of the AO. The delay in booking the articles on the system of the post office may be due to the reason that the article was handed over on 30.12.2011, which was Friday, and thereafter, due to Saturday and Sunday, the booking was finally made on 02.01.2012 by the post office department.

In any case, once the assessment order is handed over to the authorized person of the postal department to be served to the assessee, it is considered issued by the AO. Therefore, the limitation for the issuance of the assessment order will be considered when the AO has handed over the order to the authorized person of the postal department to be served to the assessee.

2. Rule 3(7)(i) Prescribing SBI's Rate of Interest to Compute Perquisite Isn't Arbitrary/Unequal

In the instant case², the issue before the Supreme Court was:

"Is Rule 3(7)(i) of the Income-tax Rules arbitrary and violative of Article 14 of the Constitution insofar as it treats the PLR of SBI as the benchmark?"

¹ Shri S.P. Kohli vs. ACIT - [2024] (Indore-Trib.)

² All India Bank Officers' Confederation vs. Central Bank of India - [2024] (Supreme Court of India)

The Apex Court held that rule 3(7)(i) was not arbitrary or irrational because it benchmarks the computation of the perquisite with reference to the SBI's PLR. SBI is the largest bank in the country, and the interest rates it fixes invariably impact and affect the interest rates being charged by other banks. By fixing a single clear benchmark for computation of the perquisite or fringe benefit, the rule prevents ascertainment of the interest rates being charged by different banks from the customers and, thus, checks unnecessary litigation.

Rule 3(7)(i) ensures application consistency, clarity for the assessee and the revenue department, and certainty about the amount to be taxed. When there is certainty and clarity, there is tax efficiency, which is beneficial to both the taxpayer and the tax authorities. These are all hallmarks of good tax legislation. This rule is based on a uniform approach yet premised on a fair determining principle that aligns with constitutional values.

It is also apposite to note that when it comes to a uniform approach, the fiscal or tax measures laws enjoy greater latitude than other statutes. The Legislature should be allowed some flexibility in such matters, and the Court would be more inclined to give judicial deference to legislative wisdom. Commercial and tax legislation tend to be highly sensitive and complex as they deal with multiple problems and are contingent.

Thus, the Court held that it would not like to interfere with the legislation in question, which prevents possibilities of abuse and promotes certainty. It is not iniquitous, draconian or harsh on the taxpayers. A straitjacket formula has solved a complex problem, meriting judicial acceptance. Holding otherwise would lead to multiple problems/issues and override legislative wisdom. The universal test in the present case is pragmatic, fair and just.

Therefore, Rule 3(7) is held to be intra vires Article 14 of the Constitution of India. Accordingly, the appeal was dismissed, and the High Courts' judgements were upheld.

3. Question of Correctness of Claim of Deduction u/s 80JJAA Can't Represent Escapement of Income

In the instant case³, the Assessee was engaged in information technology consulting, software development and business process services. For the relevant assessment year, a return of income was filed, claiming deduction under section 80JJAA of the Act. Such deduction was claimed after furnishing relevant forms and audit reports.

During the assessment proceedings, the assessment order was passed under Section 143(3), accepting the return of income filed by the petitioner. Subsequently, the Assessing Officer (AO) issued a notice under section 148 contending that the deduction under section 80JJAA was not available to the assessee as it was not deriving any profit from the manufacturing of goods in the factory.

Considering the deduction claim under section 80JJAA as information suggesting that income escaped assessment, AO passed the order under section 148A(d) and notice under section 148 of the Act.

Aggrieved by such notice, assessee filed writ petition before the Bombay High Court.

³ Hexaware Technologies Ltd. vs. Assistant Commissioner of Income-tax - [2024] (High Court of Bombay)

The High Court held that the issue raised in the impugned initial notice and the impugned order pertain to the correct claim of deduction/allowances or the expenditure incurred. There was also no allegation regarding income escaping tax on account of any undisclosed asset. The claim of deduction under Section 80JJAA or an issue of the correctness of the claim of deduction under Chapter VI of the Act cannot be covered by Section 149(1)(b).

Section 149(1)(b) prescribes that escaped income must be represented in the form of (i) an asset, (ii) expenditure in respect of a transaction or in relation to an event, or (iii) an entry in the books of account. The question of the correctness of the claim of deduction under Section 80JJAA cannot represent the escapement of income in the form of an asset. The term 'asset' is defined in Explanation to Section 149 to include the immovable property being land or building or both, shares and securities, loans and advances, and deposits in bank account. The alleged claim of disallowance of deduction also can never fall under the specified category as it was neither a case of expenditure in relation to an event nor a case of an entry in the books of account, as no entries were passed in the books of account for claiming a deduction.

Furthermore, it was clarified there cannot be a reopening based on a change of opinion. The assessee claimed a deduction under Section 80JJAA in the return of income along with the tax audit report. AO also passed the assessment order allowing the claim of deduction under Section 80JJAA. Such claim was allowed by AO in the earlier years. Thus, the present reopening was clearly a case of change of opinion; hence, the reassessment was invalid and bad in law.

4. Payment Made to Agricultural Board for Development Works on Assessee's Behalf Allowable as Application of Income

In the instant case⁴, the assessee-Market Committee paid a certain amount to the Haryana State Agricultural Market Board (Board) on account of development work on its behalf. While furnishing the return of income, assessee claimed deduction of same as application of income.

The Assessing Officer (AO) construed such payment as repayment of loan taken by the assessee from the Board for construction of rural roads and development of Mandis. Considering it as the discharge of old loan liability, AO denied the exemption under section 11 on such payment.

On appeal, CIT(A) allowed the assessee's appeal and deleted the additions made by the assessee. Subsequently, the Tribunal reversed the CIT(A) 's order and confirmed the additions made by AO. The matter then reached before the Punjab and Haryana High Court.

The High Court ruled that the Market Committee was applying its funds as per the statutory provisions provided under the Punjab Agricultural Produce Markets Act, 1961 (Market Act).

The Market Committee was vested with the responsibility of effecting improvements besides ensuring that there is repair and maintenance of the existing infrastructure, and the whole purpose as such is to provide better facilities in rural areas and for the safety, health and convenience of persons who visit the market area for the sale of agricultural produce and for the general interest of

⁴ Market Committee v. Assistant Commissioner of Income-tax - [2024] (High Court of Punjab & Haryana)

the persons associated with the activities connected therewith.

Section 26 of the Markets Act provides the purpose for which the Board may expand the market development fund, whereas section 27 provides that part of the funds earned by a Market Committee has to be paid to the Board as construction, and the Board can utilize the same for the purposes enumerated in the Statute.

Thus, the role of the Market Committee is to utilize its funds for allied purposes, and it is interlinked with the Board. The responsibility of the Board is also to collect information in connection with agricultural activities, in addition to educating agriculturists so that they can get better yields and higher returns. Therefore, the market development fund is also to be used to construct link roads, approach roads, culverts and bridges, which is part of the welfare activities the two agencies do.

In the instant case, the payment in question had been made to the Board on account of development works on the Board's behalf, and the Board had issued the receipt. The receipt would show that the aforesaid amount was deposited for development works. It was accordingly pointed out that the Board had incurred expenditure on development works on account of the assessee. Accordingly, additions were deleted.