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Tax Digest

- Recent case laws

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CBDT Introduces Real-time Status Display for Taxpayers in AIS to Track Feedback Submitted by Them

The Central Board of Direct Taxes (CBDT) has rolled out a new functionality in the Annual Information Statement (AIS) to display the status of the information confirmation process. The new functionality will help taxpayers check whether their feedback is acted upon by the Source/Reporting Entities.

The following attributes shall be visible to the taxpayer for the status of Feedback confirmation from Source:

- Whether feedback is shared for confirmation;
- Feedback Shared On;
- Source Responded On;
- Source Response.

This new functionality is expected to increase transparency by displaying such information in AIS to the taxpayer. This is another initiative of the Income Tax Department towards ease of compliance and enhanced taxpayer services.

1. Completing Assessment Without Issuing Sec. 143(2) Notice to Assessee is an Incurable Defect | ITAT

In the instant case¹, cash had been deposited in the bank account opened in the assessee's name on various dates throughout the financial year 2009-10. However, no return of income had been filed by the assessee under section 139(1) in normal course.

Assessing Officer (AO) reopened assessment proceedings vide issue of a notice under section 148. In response to notice under section 148, the assessee submitted his return disclosing total income from salary and insurance commission. He finally completed the assessment on a total income of certain amount.

The assessee filed an instant appeal contending that assessment framed under section 147 was bad in law as the Assessing Officer did not issue the jurisdictional notice under section 143(2).

The Tribunal held that it is found that the assessee repeatedly applied for inspection of case records for obtaining certified copies of order sheets and for obtaining copies of notice under section 143(2), if the same at all exists in the files of AO, and had even paid the requisite fees by way of challan, but the same wasn't been allowed by the AO.

The department could not confirm whether the statutory notice under section 143(2) had been issued or not in the absence of assessment records in his custody. He also expressed his inability to produce the same, and he had not brought anything on record contrary to the arguments advanced by the assessee.

Under such circumstances, it was held that the AO had not issued the statutory notice under section 143(2) in response to the return filed under section 148. It was not a case where notice under section

143(2) had been issued and not served upon the assessee, but it was a case where the notice under section 143(2) had never been issued at all for the assumption of jurisdiction. The non-issue of the statutory notice under section 143(2) is an incurable defect that cannot be cured because the basic foundation of the assessment proceedings is bad in law.

Thus, assessee's appeal was allowed.

2. No Question of Law Arises if Assessee Failed to Establish Basic Ingredients Required to Be Established u/s 68

In the instant case², The assessee, a private company, was incorporated on 29.06.2011 and filed the return of income for the assessment year 2012-13. During the previous year, the assessee raised share capital along with a security premium. The case was selected for scrutiny, and notices under Section 143(2) and 142(1) were issued. In response to the notice, the assessee's authorised representative appeared and filed the details as requested.

Unsatisfied with the response, the AO issued summons under Section 131 to the directors of the assessee. The summons required them to produce proof of identity/PAN, a list of companies where the directors were directors or shareholders, proof of acknowledgement of filing personal income tax returns, copies of the accounts, etc. Since the assessee failed to comply with the summons, the AO completed the assessment under Section 143(3) by adding the share capital amount under Section 68.

¹ Ashish Sharma v. ITO - [2024] (Amritsar-Trib.)

² Balgopal Merchants (P.) Ltd. vs. Principal Commissioner of Income Tax - [2024] (High Court of Calcutta)

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The CIT(A) and the Tribunal confirmed the additions. Aggrieved by the order, the assessee filed the present appeal before the Calcutta High Court.

The Court held that the assessee was incorporated in June 2011 and was in the first year of its operation. On examining the facts, it was found that the assessee had no track record or asset base for demanding an astronomical high premium per share, defying all commercial and financial prudence and logic.

There was no noticeable business activity or book value/earnings per share, which can justify the very high share premium. The assessee had admitted that the companies to whom the shares were issued at a premium were its associates. However, there was no explanation as to why the shares were allotted to the companies with such a high premium per share while the shares were allotted to individuals without any premium.

Further, the assessee had failed to establish that it had actively involved itself in the development of land. Thus, charging such a premium was illogical, and there was no basis for fixing such an amount. There was nothing to indicate the identity, creditworthiness of the shares subscribers, or genuineness of the transactions.

Since the assessee failed to establish the basic ingredients required to be established under section 68, no question of law arose for consideration.

3. ITAT Justified Sec. 80GGC Disallowance as Assessee Donated 50% of His Income to Unrecognized Political Party

In the instant case³, the assessee, an individual, derived income from house property, business income, and income from other sources. While filing the return of income for the relevant assessment year, the assessee claimed a deduction under section 80GGC for contributing to a political party.

During the assessment proceedings, the Assessing Officer (AO) found that the assessee contributed almost 50% of his earnings to a political party. To verify the genuineness of the assessee's claim and the existence of the political party, the AO issued notice under section 133(6) to the political party. Meanwhile, he was informed that the political party failed to furnish its annual audited account and contribution report to the Chief Election Officer.

Subsequently, AO issued a show cause notice to the assessee to prove the genuineness of such donation/ contribution as the political party failed to furnish its bank statement and copy of form 24 submitted to the Election Commissioner of India. Dissatisfied with the assessee's reply, the AO disallowed the entire donation to the political party and passed the assessment order accordingly. On appeal, the CIT(A) upheld the order of AO.

Aggrieved by the assessment order, the assessee preferred an appeal to the Surat Tribunal.

The Tribunal held that the assessee did not furnish any specific evidence or pleaded facts other than those pleaded before the AO. The assessee had earned gross total income of Rs. 1.08 crores, out of which Rs. 50.00 lakh was donated to an unrecognized political party. There was no evidence that the said political party was active or had ever contested any regional or national-level election.

³ Jayeshkumar Gopalbhai Akbari vs. Deputy Commissioner of Income Tax [2024] (Surat-Trib.)

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Further, the assessee had not replied to the basic question and the objection raised by the assessing officer about his doubt on the genuineness of his contribution to such political party, except claiming that it is not his duty to verify the affairs of such political party. It is not the assessee's case that he is one of the main officer bearers or has any organizational post at the District level or State level in the said political party. Even the assessee has not provided the details of his bank account or the bank account of such political party.

The assessee had not explained how he contracted with such a political party and why such a huge donation was made to them. The assessee had not furnished anything in the assessment or appellate proceedings as to why he donated almost his half gross total income earned to a paper political party about whom he does not even base fact. The assessee before the Tribunal filed a copy of the receipt of contribution/donation to the said political party. No certificate was furnished in the form of verification of the list of documents.

Thus, the Tribunal confirmed the additions made by the AO.

4. No Sec. 54 Relief if New House Didn't Have Basic Amenities Like Water & Electricity Connection

In the instant case⁴, the assessee sold a property and claimed a deduction under section 54 of the Income-tax Act. The Assessing Officer (AO) observed that the assessee had only entered into an agreement to sell for the purchase of 1.75 acres of agricultural land, on which he was desirous to

construct a residential building. The house had not been constructed till the due date.

Further, the AO concluded that the assessee had confirmed that there was no electricity supply or water connection on the property for which deduction under section 54 was claimed. Even the assessee did not submit the approved map for the construction of the house.

Accordingly, the AO denied the assessee's claim for deduction under section 54. The CIT(A) reversed the order of AO. Aggrieved by the order, the AO filed the instant appeal before the Tribunal.

The Delhi Tribunal held that the AO had ensured that the concerned site where the property is situated had been visited physically by the Inspector and the Office Superintendent twice. In fact, one such visit was made physically to the site in the presence of the Authorized Representative of the assessee who appeared before the AO. Basic amenities like a boundary wall, kitchen, bathroom, bedroom, electricity, and water connection are essential for proper habitation, regardless of whether the residential house is located in an urban or rural area.

None of these basic amenities were present on the subject-mentioned property, for which the assessee claimed deduction under section 54. Even the Income-tax Inspector, along with the Office Superintendent attached to the office of the AO, together with the Authorized Representative of the assessee (who appeared before the AO), had physically visited the site and confirmed the alleged house did not even have the basic amenities listed herein above.

Therefore, the taxpayer did not build the residential property within the designated timeframe and did not construct any residential dwelling by

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

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25.09.2017 that could be considered suitable for habitation. Accordingly, the AO had rightly denied the deduction under section 54.