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Direct Tax Newsletter

Tax Digest

- Recent case laws

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No Higher TDS/TCS If Deductee/Collectee Dies On or Before 31-05-24 Without Linking PAN-Aadhaar | CBDT

Circular no. 8/2024, dated 05-08-2024

Rule 114AAA lists down consequences that apply if the PAN of a person becomes inoperative due to non-linking with his Aadhaar. One of the consequences listed is tax shall be deducted/collected at a higher rate in accordance with section 206AA/206CC.

The Central Board of Direct Taxes (CBDT) vide Circular no. 06 of 2024 dated 23.04.2024, specified that for transactions up to March 31, 2024, if the PAN becomes active (linked with Aadhaar) by May 31, 2024, there shall be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC. Tax shall be deducted/collected as per the relevant provisions of the Act.

1. Sale of Right & Interest in Shares Not Taxable If Same Were Acquired Through Agreement Executed Outside India

In the instant case[1], the assessee, a non-resident individual, was employed by a Japanese company in the USA. As part of his employment, the assessee was entitled to receive certain shares of Indian companies. The shares were held by the employer's Singapore entities. Later, the employer transferred the rights and benefits of such shares to the assessee through an assignment deed. The assessee offered the compensation value of shares in his US tax return.

Assessee submitted that he transferred his interest/rights over the shares, which were situated outside India. Thus, the capital gain was not taxable in India. On the contrary, the Assessing Officer (AO) treated the capital gain as short-term. He believed that the shares were acquired by the assessee at a later date through an employment agreement. The AO also issued notices to the Indian companies to prove the ownership of shares. As per the response received from the companies, the assessee was not registered as a shareholder of the company.

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

The Tribunal held that the assessee was a resident of the USA. As per the employment agreement, the assessee was entitled to receive shares of the Indian company. The Singapore entities of the employer held the shares. Later, the employer transferred the rights and benefits of such shares to the assessee through an assignment deed. It was a fact on record that the assessee had offered to tax the compensation value of shares in his US tax return. Subsequently, the assessee entered into a termination agreement with the employer for termination of his Employment. Pursuant to which the employer paid the amount, subject to which the assessee's interest in the shares would stand fully extinguished.

Therefore, it cannot be said that the capital gain derived by the assessee was through transfer of capital assets situated in India. Patently, the capital asset in the nature of rights and interests accrued to the assessee as part of employment benefit and was acquired by him through assignment deed. Thus, the source of assessee's rights and interests constituting a capital asset was through aforesaid agreement executed in USA.

Accordingly, the situs of capital asset in the nature of rights and interests acquired by the assessee, which were subsequently transferred and subjected to capital gain, was in the USA and not located in India. Therefore, in terms of section 9(1)(i)(a) of the Act, the income derived from the transfer of such capital asset is not taxable in India.

2. ITAT Quashed Order as AO Started Making Enquiries on Loans Even Before Converting Case Into Full Scrutiny

In the instant case[2], the Assessee, a limited liability partnership (LLP), filed its return of income for the relevant assessment year. The case was selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS), and notices were issued to the assessee for limited scrutiny. The notice was issued for four issues namely interest expenses, income from Real Estate Business, Sales Turnover mismatch and other expenses claimed in the profit and loss a/c.

Subsequently, the Assessing Officer (AO) issued a notice under section 142(1) seeking information

[1] Nikesh Arora vs. Deputy Commissioner of Income-tax [2024] (Delhi-Trib.) [2024] (ITAT Delhi)

[2] Sukhdham Infrastructures LLP vs. ITO - [2024] (Kolkata-Trib.)

regarding the assessee's unsecured loan. After receiving the information, the AO converted the limited scrutiny into complete scrutiny and added to the assessee's income.

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

The Tribunal held that the AO conducted inquiries during the year even before converting the limited scrutiny into complete scrutiny. This was evident from the notice wherein the information or details were called for. Thus, it was undisputed that the AO inquired about the issue of secured and unsecured loans even before converting the limited scrutiny to complete scrutiny.

Instruction No. 5/2016, issued by CBDT on 14.07.2016, provides that while proposing to take up complete scrutiny that was fixed for limited scrutiny, the AO shall form a reasonable view that there is a possibility of under-assessment of income if the case is not examined under complete scrutiny. That plea has to be on credible material, not merely on suspicion and conjecture or unreliable sources. It provides that there has to be a direct nexus between the available material and the formation of such a view.

In the present case, this was a clear violation of the instructions issued by the CBDT. The AO was required to form a reasonable view that there was a possibility of under-assessment of income if the case was not examined under complete scrutiny.
Therefore, the AO exceeded his jurisdiction by enquiring into those issues beyond the scope of limited scrutiny even prior to the date of conversion, which was in clear violation of the mandate given by CBDT.

3. HC Quashed Reassessment Notice Issued by JAO Without Conducting Faceless Assessment as Envisaged u/s 144B

In the instant case[3], the Assessee raises a common question of law through a series of writ petitions: whether the Jurisdictional Assessing Officer (JAO) is empowered to issue a notice under section 148 after the new regime of faceless assessment has been brought into force by the amendment made under section 148.

In the instant case, the JAO issued a reassessment notice under section 148. The assessee challenged the validity of reopening the assessment on the ground that the same should have been conducted by the National Faceless Assessment Centre (NFAC) and not by the Assessing Officer.

The revenue claimed that, as per Office Memorandum 20-02-2023 and CBDT circular dated 19-01-2024, high-risk cases were to be examined by JAO to issue a reopening notice.

The High Court held that the power of transfer to the Jurisdictional Assessing Officer is available, but it has to be exercised only in a particular case considering the facts and circumstances therein and not by way of general order as passed vide letter dated 19.01.2024.

Thus, the authorities cannot be allowed to usurp the legal provisions to their satisfaction and convenience, causing hardship to the

[3] Jasjit Singh v. Union of India - [2024] (High Court of Punjab & Haryana)

assessees and confusion in the minds of the taxpayers.

In the opinion of the Court, instructions and circulars can be issued only to supplement the statutory provisions and implement them. Therefore, the notices issued by the JAO under Section 148 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under Section 144B were found to be contrary to the provisions of the Act.

4. 'Reverse Indexation Method' Can't Be Allowed if DVO Prepared Report Based on Strong Undisputable Method

In the instant case[4], the assessee had filed a return of income and declared long-term capital gain arising from the sale of a residential house. The assessee opted for deduction of the cost of acquisition based on Fair Market Value (FMV) as of 1-4-1981 and, accordingly, worked FMV.

However, the Assessing Officer (AO) referred the matter to the DVO to determine the correct amount of FMV as of 1-4-1981. The AO allowed the deduction of the cost of acquisition adopting the FMV as determined by the DVO.

Contending that the AO ought to have computed FMV based on the 'reverse indexation method', the assessee filed an appeal to CIT(A). CIT(A) upheld the order of the AO, and the matter reached before the Indore Tribunal.

ITAT Held

The Tribunal held that the assessee's only contention was that the lower authorities ought to have computed FMV based on 'reverse indexation method'. Undisputedly, there was no such method prescribed in the Income-tax Act 1961. However, the modus in this method was such that the present 'sale-consideration' of the sold asset was divided by the present inflation index and multiplied by the inflation index as of 1-4-1981. The Bench indicated to the assessee that this method was the last resort when no other basis was available for the determination of FMV.

In the instant case, the AO referred to the DVO, who gave a detailed explanation of his estimation in his report. The DVO also mentioned the method of valuation he adopted as 'FMV by Collectors Guidelines for registration of immovable property'.

Since DVO's work was based on a strong, undisputable method, the 'reverse indexation method' cannot be allowed. Consequently, the order of AO in accepting FMV reported by DVO was correct.

[4] Late Shri Balkrishan Joshi (Through L/H Shri Bhoopendra Joshi) vs. Income-tax Officer - [2024] (Indore-Trib.)