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CBDT Specifies Situations Where Enquiries/Verification Tasks by Verification Unit Not to Be Communicated Electronically

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Section 144B(5) provides that all communications between the NFAC and assessees, his authorised representative, or any other person shall be done exclusively by electronic mode. Further, all internal communication between the NFAC and various units shall be done exclusively in electronic mode. However, these provisions shall not apply to certain enquiries or verifications conducted by the Verification Unit in the circumstances as may be specified by the CBDT on this behalf.

In this respect, the CBDT has issued an order specifying that inquiry or verification functions by the Verification Unit should not be communicated electronically under section 144B in some cases.

1. AO to Record Specific Finding That Undisclosed Income Was Based on Tangible Material Before Levying Penalty u/s 271AAA

In the instant case[1], during the search and seizure operation under section 132(1) in case of firm, a partner on behalf of the assessee firm surrendered a sum as income in his statement. Subsequently, a return of income was filed by the assessee firm showing such surrendered income and paid due taxes and interest thereon.

The Assessing Officer (AO) contended that the assessee had failed to specify the manner in which it had derived the additional undisclosed income which was mandatory requirement as per the provisions of Section 271AAA. Consequently, penalty proceedings under section 271AAA were initiated against the assessee firm.

On appeal, the penalty under section 271AAA imposed by the AO was sustained. Aggrieved by the order, an appeal was filed to the Chandigarh Tribunal.

The Tribunal held that the penalty provisions have to be strictly construed. In the instant case, the AO invoked the provisions of Section 271AAA. Thus, whether the conditions specified therein have been fulfilled before the penalty is fastened on the assessee firm needs to be seen.

Section 271AAA provides that the AO may direct that where the search has been initiated on or after June 1, 2007, the assessee shall pay by way of penalty at the rate of 10% of the undisclosed income of the specified previous year. Therefore, the essential condition that needs to be satisfied before the levy of a penalty is that there is an undisclosed income of the specified previous year as found during the course of the search.

The term "undisclosed income" is specifically defined in the explanation to section 271AAA to mean any income of the specified previous year represented either wholly or partly by any money, bullion, jewellery or other article or thing found during the course of search which has not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year.

Therefore, the fact that some undisclosed income was surrendered during the search, that the surrender is voluntary and emerges out of the statements recorded during the search, or that the undisclosed income was not recorded in the books of account prior to the date of search is not sufficient to fasten the levy of penalty.

The undisclosed income so surrendered and admitted during the course of the search has to fall within the four corners of the definition of the undisclosed income, and only in situations where it satisfies the said definition the levy of penalty can be said to be justified and not otherwise. It is for the AO to record a specific finding that undisclosed income, as so defined, has been found based on tangible, verifiable material found during the course of the search, and the onus is thus on the AO to satisfy the conditions before the charge for levy of penalty is fastened on the assessee.

Accordingly, the penalty under section 271AAA was deleted.

2. Corpus Donations Can't Be Treated as Rent Just Because Trust Declared Additional Service Income Under Amnesty Scheme

[1] Ajay Kumar Sood Engineers and Contractors vs. Deputy Commissioner of Income-tax - [2024] (Chandigarh - Trib.)

In the instant case[2], the assessee was a trust registered under section 12A. The trust's main object was to establish educational and medical institutions and provide scholarships to needy people. The assessee also ran Kalyana Mandapam.
During the assessment proceedings, the Assessing Officer (AO) contended that the corpus donations received by the assessee were nothing but rental receipts since the same was received from only those persons who had hired halls on various occasions. The allegation was primarily based on the fact that the assessee had declared additional service income under the amnesty scheme of the Service Tax Department and paid additional service tax on the donations. Accordingly, the AO denied the assessee's claim of exemption under section 11.

The matter reached the Chennai Tribunal.

The Tribunal held that the allegation that the corpus donations were nothing but rental receipts was primarily based on the fact that the assessee has declared additional service income under the amnesty scheme of the Service Tax department and paid additional service tax on the donations. The taxability of service under service tax is based on different principles and the computation of income under the Income Tax Act is based on different principles.
To illustrate, the assessee may have collected amenities charges on an actual basis from hirers. In that event, the assessee would incur equivalent expenditure to procure those services, and finally, the resultant income out of these receipts would ultimately be nil. In other words, though these charges would still be subjected to service tax, under the Income Tax Act, the same would not result in income for the assessee. The collection of such charges, connected with renting the hall, would still be chargeable to service tax, although the same would ultimately have no income element. Thus, the concept of service income under the Service Tax Act and income under the Income Tax Act are quite different, and the two cannot be equated.

Further, there was no allegation or finding by the AO that the corpus donations received by the assessee were non-voluntary or forced donations. Even though the hirer of the hall and contributor of donations were the same persons, the donor thereof understood the donations to be corpus donations and voluntary contributions only and agreed to such donations with a complete understanding of the nature thereof.

Therefore, equating the same with rental receipts would not be a correct proposition unless it was shown that the rental charges were bifurcated into hall rental charges and donations. The assessee has made the rental collection under various heads, viz. hall rent, refundable deposit, charges for amenities, extra rooms, fuel, gas, electricity, etc., under full knowledge of the hirer of Kalyan Mandapams who have agreed to pay the amounts under those heads with full knowledge and understanding. Similarly, corpus donations have separately been contributed by those persons with a full understanding of the nature thereof.

Therefore, the assessee's donations were voluntary and could not be attributed to rental charges.

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[2] Thamizhvel PT Rajan Commemoration Trust v. ITO (Exemptions) - [2024] (Chennai-Trib.)

3. Assessee to Be Given Opportunity to Explain Before Switching Additions From u/s 68 to 69A

In the instant case[3], the assessee received a notice for the relevant assessment year proposing to add a certain amount to the total income as unexplained cash credits under section 68. The assessee responded to the notice explaining why the addition should not be made. Despite the response, the Faceless Assessment Unit (NFAC) issued an assessment order, adding the said amount as unexplained money under section 69A instead of section 68.

Contending that this switch from section 68 to section 69A without prior notice violated the principles of natural justice, the assessee filed a writ petition before the Calcutta High Court.

The High Court ruled that the two provisions are entirely separate. Under Section 68, if a sum is credited to an assessee's books for the previous year without an explanation regarding its nature and source, or if the explanation is unsatisfactory, the income tax authorities may treat that sum as the assessee's income for the previous year.

In contrast, Section 69A applies when the assessee is found to possess money, jewellery, or other valuable assets not recorded in their accounts. If there is no explanation for the nature and source of these assets, or if the explanation provided is unsatisfactory, the assets will be deemed as income for that financial year.

In this case, although the notice to show cause clearly identified that the amount proposed to be added back was by invoking the provisions of Section 68 and the assessee on such premise had responded to the same, the final assessment order was passed by treating the same to be an "unexplained money" under section 69A.

The language used in section 69A clearly required the assessee to be afforded an opportunity to explain. As such, even if the NFAC were of the opinion that in this case section 69A ought to be invoked, NFAC ought to have granted an opportunity to the assessee to explain at least prior to passing the assessment order. In the absence of any notice, the assessee was obviously taken by surprise and was denied the opportunity to appropriately explain.

Accordingly, the determination made by NFAC, as reflected in the assessment order, was vitiated. Since the above violates the principles of natural justice, the order impugned became unenforceable in law.

4. Affiliation With and Recognition by Regulatory Authority Not Essential Attributes of Education u/s 2(15)

In the instant case[4], the assessee was a society registered under the Societies Registration Act,

[3] Vishal Jhajharia vs. Assessment Unit, Income-tax Department Faceless Assessment Centre - [2024] (Calcutta)

[4] CIT(E) vs. NIIT Foundation - [2024] (High Court of Delhi)

1860, which held a registration under Section 12A. It was also accorded recognition under Section 80G(5). For the relevant assessment year, the assessee furnished its return of income, and the case was selected for scrutiny assessment. The Assessing Officer (AO) accepted the charitable nature of the educational activities undertaken by the assessee, and accordingly, the assessment was completed.

However, the CIT(E) noticed that the assessee was not affiliated with any regulatory body. Therefore, exercising the powers under section 263, CIT(E) set aside the assessment, contending that it was not engaged in imparting education and denied exemption under section 11.

On appeal, the Tribunal allowed the assessee's appeal, and the matter then reached before the Delhi High Court.

The High Court held that the assessee was found to have essentially undertaken educational activities spread across various subjects and streams, providing opportunities to underprivileged youth and others and essentially skilling them for the purpose of future employment. It was also stated that various digital literacy initiatives were undertaken across as many as ten states of the country. The instruction was imparted at either NIIT-run centres or NGO-partnered establishments. Its revenue stream was disclosed to flow from tuition fees and other educational services it provides. The fee structure was asserted to be heavily subsidised and discounted.

Further, the activities undertaken by the assessee were systematic. They proceeded along well-defined lines based on curated courses designed to skill and educate the students who had been enrolled. On facts, the assessee was also able to establish beyond a measure of doubt that its courses were informed by a fixed curriculum and attendance criteria, thus fulfilling all essential ingredients of formal education.

Relying upon the principles enunciated by the Supreme Court in both Lok Shikshana Trust (1976) 1 SCC 254 and New Noble Educational Society [2022] 143 taxmann.com 276 (SC), it was held that affiliation with and recognition by a regulatory authority are not essential attributes of education under Section 2(15).

In addition, the assessee's centres had been duly approved by the NSDC, a nodal agency concerned with vocational and technical training. It explained that section 2(15) is concerned with training and developing knowledge, skill, mind, and character through formal schooling. The assessee clearly met these tests. Accordingly, the appeal was dismissed.