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## Tax Digest

- Recent case laws

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### No Interest on Credit Balances Outstanding Under National Saving Scheme From 01-10-2024

*G.S.R. 537(E) , G.S.R. 538(E), dated 29-08-2024*

The National Saving Scheme was introduced w.e.f 01-10-1992 and discontinued from 01.11.2002. It has been notified that the interest on credit balances of the subscribers under this scheme will be computed till 30-09-2024 and no interest shall be computed on or after 01-10-2024.

### **1. No Deduction Towards Exp. If Assessee Failed to Provide Any Proof in Support of Exp. Claimed**

In the instant case<sup>1</sup>, during the relevant assessment year, the assessee acted as a consenting party to the sale transaction of land. A partial amount was received by the assessee subsequent to the completion of such transaction. However, after a certain period, an order was passed by the District Superintendent of Land Records restoring the names of earlier owners. Accordingly, the purchasers filed a civil suit against the assessee and the sellers.

With respect to the amount received as consentor, the assessee claimed that no income was accrued to the assessee but to have a proper disclosure of the transaction, the assessee disclosed the amount under the head income from other sources and claimed deduction under section 57 of the equal amount.

During the assessment proceedings, the Assessing Officer (AO) disallowed the deduction under section 57 in the absence of evidence in support of such a claim.

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

The Tribunal held that the claim of the assessee, that the AO made the addition, was not correct because he himself declared the income and, during the assessment proceedings, could not substantiate the deduction claimed by him. It was also observed that the case of the assessee was selected under CASS for the reason of claiming a deduction under the head 'income from other sources'. Therefore, it was the duty of AO to verify the claim of deduction made by the assessee in his return of income.

In the instant case, the assessee failed to provide any proof in support of the expenses or deductions he claimed. The legislature has provided certain procedures under the Income Tax Act, and the assessee cannot choose to show income or expenses according to his own choice.

Therefore, the AO did not commit any error in disallowing the expenses claimed by the assessee in the name of coordination and settlement expenses in the absence of any supporting evidence.

Further, the assessee's contention that due to the pending litigation, the income was not accrued to him, therefore, not real income & its declaration was only for the purpose of disclosure, it was held that the income was already appearing in Form 26AS in the shape of principal amount & its TDS.

The civil suit of forgery was filed by the purchasers only after 3 years of the sale of the property, till then the assessee was enjoying the amount without making payment of income tax. Even after the intimation of the civil suit against him the assessee did not bother to refund the amount to the purchaser & has also filed a complaint against the purchaser for recovery of the balance amount from the purchaser. It was obvious that till date the authority did not cancel the sale deed and the assessee was trying to avoid the payment of income tax in the name of the civil suit.

Therefore, it appeared that the assessee was working with mala fide intention and did not have clean hands. The assessee also tried to misguide the income tax department by claiming a deduction in the name of coordination and settlement expenses for which he does not have any supporting documents. Accordingly, the disallowance by the AO was upheld.

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<sup>1</sup> [Uday Jawahar Kotnis vs. Income-tax Officer - \[2024\] \(Pune - Trib.\)](#)

## 2. LIC Mutual Fund Isn't Public Financial Institution | Interest Payable to It Isn't Covered by Section 43B

In the instant case<sup>2</sup>, during the relevant assessment year, LIC Mutual Fund purchased certain unsecured debentures of the assessee company. The assessee extended the interest on unsecured debentures payable during the year to LIC Mutual Fund for another two years. It claimed deduction of the interest payable to LIC Mutual Fund. The Assessing Officer (AO) invoking the provisions of section 43B disallowed the interest on the ground that it had not been paid within the stipulated period.

On appeal, CIT(A) allowed the assessee's appeal. Subsequently, the order was reversed by the Tribunal, disallowing the deduction claimed by the assessee. Aggrieved by the order, an appeal was filed to the Calcutta High Court.

The High Court held that as per clause 2(q) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (SEBI Mutual Funds Regulations), mutual fund means the fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money markets, gold or gold related instruments, silver or silver related instruments, real estate assets and other assets and instruments as may be specified by the Board from time to time.

Clause 14 mandatorily requires that a mutual fund be constituted as a trust, and the instrument of a trust shall be a deed duly registered under the provisions of the Indian Registration Act, 1908, executed by the sponsorer in favour of the trustees

named in such an instrument. Thus, LIC Mutual Fund is a trust, and the trust deed has been duly registered under the Indian Registration Act.

LIC Mutual Fund is a trust of movable property, which has been created in terms of section 6 of the Indian Trust Act, 1882. The Life Insurance Corporation of India can be said to be an author of the trust or settlor of the trust, but the said trust and the Life Insurance Corporation of India are both separate legal entities. While the LIC Mutual Fund Trust is governed by the provisions of the Indian Trust Act read with SEBI Mutual Fund Regulations, the Life Insurance Corporation of India is governed by the provisions of the Life Insurance Corporation Act, 1956.

Clause (d) of section 43B refers to any sum payable by the assessee as interest on any loan or borrowing from any public financial institution. Explanation 4(a) to section 43B provides that public financial institutions shall have the meaning assigned to them under section 4A of the Companies Act, 1956.

Section 4A specifically mentions the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956. It does not mention LIC Mutual Fund which is a trust established under the Indian Trust Act. Further, section 4A(2) empowers the Central Government to specify, by notification in the official gazette, such other institutions as it may think fit to be a public financial institution, provided that no institution shall be so specified unless – (i) it has been established or constituted by or under any Central Act, or (ii) not less than 51 per cent of the paid-up share capital of such institution is held or controlled by the Central Government.

Neither LIC Mutual Fund Trust is mentioned in the list under sub-section (1) of section 4A of the

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<sup>2</sup> V2 Retail Ltd. vs. Deputy Commissioner of Income-tax - [2024] (Calcutta High Court)

Companies Act, 1956, nor has the LIC Mutual Fund Trust been established or constituted by or under any Central Act. Therefore, the LIC Mutual Fund Trust is not a public financial institution under section 4A. Consequently clause (d) of section 43B is not attracted under the facts and circumstances of the case.

Accordingly, it could not be disallowed in the hands of the assessee on the grounds of non-compliance with conditions of section 43B, and the disallowance of interest invoking the provisions of section 43B cannot be sustained.

### **3. SetCom's Order Accepting Explanation of Gifts Received from Friends and Relatives Couldn't Be Faulted**

In the instant case<sup>3</sup>, a search under Section 132 was conducted on the assessee's premises, during which records, documents, and jewellery were seized. During such the search, an undisclosed income was offered for tax. However, additional income offered before the Commission was asserted to constitute cash gifts received from relatives and well-wishers. The assessee also filed an Affidavit under Rule 8 of the Income Tax Settlement Commission (Procedure) Rules, 1997 and declared that she needed to maintain the details of cash gifts.

The PCIT also filed a report under Rule 9 and raised various objections. However, the Settlement Commission took note of the declaration made under Rule 8 of the Income Tax Settlement Commission (Procedure) Rules and accepted the assertion of cash gifts. Accordingly, the Commission deemed the additional income offered for tax as being fair and reasonable.

The matter reached before the Karnataka High Court.

The High Court held that the assessee had filed an affidavit under Rule 8 explaining the receipt of gifts from friends and relatives. The revenue did not rebut such a declaration by presenting any additional facts to the contrary. In light of this, the Settlement Commission's conclusion that it accepted the explanation 'in the spirit of settlement' cannot be faulted, calling for interference in the exercise of the limited jurisdiction.

With respect to the contention that the additional income disclosed was to be treated as income under the head Section 68 or 69. The Settlement Commission has once again referred to the affidavit filed under Rule 8 and observed that the report under Rule 9 does not place any contra material. It was observed that the PCIT did not show how the conditions prescribed under Section 115BBE were met.

The special slab of higher rate as specified under Section 115BBE would be applicable as regards the income referred to in Sections 69, 69A, 69B, 69C or Section 69D. As rightly pointed out, the PCIT had not stated which particular provision would be applicable, as each provision has a distinct scope and applicability. In the facts of the present case, the question of invoking Section 69D did not arise. If any of the provisions of Section 69, 69A to 69C are sought to be invoked, in all such provisions, the non-acceptance of the explanation will result in such amount "may be deemed to be the income of the assessee for such financial year."

Accordingly, in the present case, the conclusion arrived at by the Settlement Commission while accepting the contents of the affidavit filed under Rule 8 'in the spirit of the settlement' and refusing to accept the contention of having recourse to Section 115BBE cannot be permitted to be interfered with.

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<sup>3</sup> [Principal Commissioner of Income-tax vs. Smt. Umah Agarwal - \[2024\] \(Karnataka High Court\)](#)

**4. ITAT Restricted Penalty to 50% as AO Nowhere Stated That Clause (8) of Sec. 270A Was Applicable**

In the instant case<sup>4</sup>, for the relevant assessment year, the assessee filed his return of income. The Assessing Officer (AO) completed the assessment under section 143(3), enhancing the assessee's total income. Thereafter, the AO initiated penalty proceedings under section 270A.

While initiating the penalty proceedings under section 270A, the AO issued a notice calling upon the assessee to explain the under-reporting of income and why the penalty proceedings under section 270A could not be imposed for under-reporting his income. Considering the reply filed by the assessee, AO imposed the impugned penalty at 200% under section 270A.

On appeal, the CIT(A) sustained the penalty and the matter reached before the Delhi Tribunal.

The Tribunal held that the assessee contended that the AO stated about under-reporting income throughout the notice for imposing the penalty and also in the impugned order. But while imposing the penalty, he invoked the provision related to the misreporting of income.

The AO issued a notice invoking the provision of section 270A. From the notice, it was clear that the assessee was called upon to explain the under-reporting of income. However, while imposing the penalty under section 270A, the AO imposed a penalty at the rate of 200%, which falls under clause (8) of section 270A.

Since it was the case of the Assessing Officer that the assessee had under-reported his income and the Assessing Officer nowhere states that clause (8) of section 270A was applicable, the AO ought to have

restricted the penalty to the extent of 50%, which was leviable for under-reporting of the income.

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<sup>4</sup> [Ashok Kumar Gupta vs. DOIT - \[2024\] \(Delhi-Trib.\)](#)