A.C. Bhuteria & Co.
Chartered Accountants

16, Strand Road, Diamond Heritage,
Room No. H-703,
Kolkata – 700001

Ph: 033-46002382/ 40032841
Email id: info@acbhuteria.com

Tax Digest

- Recent case laws

Sep 30, 2024

NEWS FEED

CBDT Notifies Direct Tax Vivad Se Vishwas Rules, 2024

Notification No. 104/2024, dated 20-09-2024

To streamline the resolution of direct tax disputes, the Ministry of Finance has issued a notification introducing the "Direct Tax Vivad Se Vishwas Rules, 2024." The new rules, promulgated under the Finance (No. 2) Act, 2024, aim to provide a comprehensive framework for taxpayers to settle their pending tax disputes with the Income Tax Department.

The Rules outline the scheme's procedural aspects, offering a structured mechanism for taxpayers to resolve ongoing litigation by paying a specified amount, thereby reducing the burden of prolonged legal battles and interest liabilities.

Direct Tax Newsletter

1. Investment in Multiple Residential Units Considered as One if Purchased Through Single Sale Deed

In the instant case[1], the assessee sold four pieces of land during the relevant assessment year and received a certain consideration. She entered into an agreement with a builder to purchase four flats, which were situated on a single floor of the building and booked the flats as one unit. The aforesaid flats were allotted to the assessee and the payments for the acquisition of the flats were made.

The assessee claimed deduction under section 54F in the return of income by treating the cost of acquisition of the flats as a new residential house. However, the Assessing Officer (AO) disallowed the assessee's claim on the ground that the assessee had purchased more than one residential unit, i.e., four flats since the assessee had purchased four flats.

On appeal, CIT(A) confirmed the order of AO. Aggrieved assessee filed the instant appeal before the Cuttack Tribunal.

The Tribunal held that the entire sale consideration received by the assessee was invested in the acquisition of the four flats, and the payments were made to the builder through an account payee cheque within the prescribed time limit. It was also undisputed that the builder allotted four flats to the assessee in the relevant assessment year.

The claim over these flats of the assessee became final when it had made the payment of the sale consideration, and the builder had earmarked the flats as allotted to the assessee. It was also a fact that though there were four flats, the builder, as well as the assessee, treated them as a single unit. Further, the flats were on one floor and used as a single residential unit. These four flats were registered through a single sale deed and treated as one unit.

While disallowing the assessee's claim, the AO observed that the flats were registered four years after the sale. However, he failed to appreciate that the flats were allotted to the assessee in the relevant assessment year itself, i.e., the year when the capital assets were sold by the assessee against which the deduction under section 54F is claimed.

Since all four flats were constituted as a single residential unit and allotted by the builder as such, though having four identification numbers, they can be termed as one residential unit for the purpose of claiming deduction under section 54F. Accordingly, the assessee was eligible for deduction for the entire cost of four flats under section 54F against the sale consideration received from the sale capital asset.

2. Brokerage Paid to Obtain Refund of Amount Invested in Cancelled Project is Allowable as Deduction u/s 57

In the instant case[2], the Assessee invested in a project with a builder, which was cancelled due to the non-receipt of necessary permissions from the Government. The builder refused to return the money, due to which the assessee had to take the services of a group of brokers.

The assessee paid a brokerage of certain amount for securing a refund of the entire money invested by him in the project. The refund of money included two components, namely, the principal amount and the interest component thereon. The assessee claimed deduction of brokerage under section 57(iii).

[1] Suruchi Jena vs. ACIT - [2024] (Cuttack-Trib.)-[2024]

[2] Deepak N. Sippy v. ACIT - [2024] (Mumbai-Trib.)

During the assessment proceedings, the Assessing Officer (AO) disallowed a portion of brokerage paid by the assessee towards the principal amount. On appeal, the CIT(A) sustained the disallowance and the matter reached the Mumbai Tribunal.

The Tribunal held that the assessee paid the brokerage under a clear and specific understanding that he shall receive the full amount due from the builder, including the principal amount and the interest thereon. The amount of brokerage agreed between the two parties was a lump sum amount of Rs. 50 lakhs, which was wholly and exclusively paid to recover the total amount due from the builder.
The consideration agreed upon was not in terms of a percentage of the amount recovered by the brokers from the builder. It was a lump sum amount agreed to to recover the entire amount from the builder due to the assessee. The expenditure incurred by the assessee was for the sole purpose of recovering the amount due to him from the builder.

The assessee had no option except to incur the expenditure to make possible the recovery of the amount, including earning income in the form of interest on the principal amount. The expenditure incurred has been laid out and expended wholly and exclusively to recover the amount, including the income in the form of interest, duly reported under the heading 'income from other sources'.
Expense incurred is neither in the nature of capital expenditure nor in the nature of personal expenses of the assessee. It is also important to note that the payment of Rs 50 lakhs is a lump sum payment made by the assessee in terms of the memorandum of understanding where there is no bifurcation or split of this expenditure relating to recovery of principal and recovery of interest, both of which were due to be received from the builder by the assessee, nor it is linked on a percentage basis depending upon the quantum of recovery out of the total due.
Therefore, the deduction of brokerage expenses claimed by the assessee was justified.

3. Penalty Rightly Imposed for Furnishing Inaccurate Particulars if Assessee Withdrew Incorrect Claim by Filing Revised ITR

In the instant case[3], the assessee was an individual having interest on loans and income from house property as main source of income. The assessee filed her return of income for the relevant assessment year. Afterwards, the assessee's case was selected for scrutiny, and the assessment was completed after disallowing deductions claimed under sections 54EC and 54F of the Act.

The Assessing Officer (AO) concluded that the assessee had made an attempt to show less long-term capital gains by making claim under section 54EC without making any investment and this attempt was only to avoid tax liability. Accordingly, the AO initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars.

On appeal, CIT(A) confirmed the penalty order. Aggrieved by the order, the assessee filed an appeal to the Ahmedabad Tribunal.

The Tribunal held that as far as the deduction claimed under section 54EC was concerned, the assessee herself admitted that the claim was incorrect and, by filing a revised statement of income, withdrew the claim under section 54EC, which was an act of furnishing inaccurate particulars. Therefore, the Assessing Officer rightly imposed the penalty for intentionally furnishing inaccurate particulars of income within the meaning

3 Smt. Maya K. Dharwani vs. Income-tax Officer - [2024] (Ahmedabad-Trib.)

of section 271(1)(c) relating to the quantum of incorrect deduction under section 54EC.

4. Explanation to Sec. 14A Inserted by FA 2022 Is Applicable Prospectively

In the instant case[4], the assessee, a company engaged in the business of Lease Financing, Financial Advisory, and Capital Market Operations, had filed its return of income for the relevant assessment year showing a loss. The case was selected for scrutiny, and a notice under section 143(2) was issued.

During the assessment proceedings, the assessee made a disallowance under section 14A not by following any systematic or specific calculation method but based on the disallowance made in assessment orders of earlier assessment years.

The Assessing Officer (AO) contended that the assessee had made only estimated disallowance and had accepted the fact that disallowance under section 14A was required to be made in its case. The AO made disallowance under section 14A based on the method of disallowance as provided under Rule 8D(1)(b)(ii).

Aggrieved by the order, the assessee preferred an appeal to the CIT(A), wherein the CIT(A) partly allowed the appeal. The matter then reached the Guwahati Tribunal.

The Tribunal held that the Explanation inserted in Section 14A by the Finance Act 2022 is applicable prospectively. Therefore, the disallowance under Section 14A cannot exceed the income claimed exempt. The Tribunal relied on the decisions of the Delhi High Court in the case of Era Infrastructure (India) Ltd. [2022] 448 ITR 674 and the High Court of Calcutta in the case of Avantha Realty Ltd. [2024] 164 taxmann.com 376. The assessee filed an appeal before the Gauhati High Court.

The High Court held that the Explanation to Section 14A of the Income Tax Act, 1961 is inserted vide Finance Act, 2022. The Ministry of Finance, Union of India, issued a Memorandum Explaining the Provisions in the Finance Bill 2022. It explicitly stipulates that the amendment made to Section 14A will take effect from 1st April 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years.

Furthermore, the Supreme Court in Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717 has held that a retrospective provision in a tax act that is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used if it alters or changes the law as it earlier stood. Therefore, the Explanation to Section 14A of the Income Tax Act, 1961, inserted vide Finance Act 2022, is applicable prospectively.

4 Williamson Financial Services Limited vs. CIT - [2024] (High Court of Gauhati)