Direct Tax Newsletter

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Tax Digest

- Recent case laws

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NEWS FEED

CBDT Mandates Electronic Submission of Form 3CEDA and Form 3C-O

Notification no. 5/2024, dated 30-10-2024

The Central Board of Direct Taxes (CBDT) has notified that Form 3CEDA and Form 3C-O shall be furnished electronically starting from 31-10-2024. This notification was issued in exercise of the powers conferred under Rule 131 of the Income-tax Rules, 1962.

Form 3CEDA is used for the application for rollback of an Advance Pricing Agreement. Similarly, to get an agricultural extension project notified, an assessee is required to furnish an application electronically to the Member (IT), CBDT in Form 3C-O accordance with the guidelines prescribed under Rule 6AAD.

1. No Disallowance of Salary Just Because Employee Gave It Back as Interest-Free Loan to Employer

In the instant case[1], the assessee, a partnership firm, paid salary to an employee after deducting tax at source and claiming the deduction as business expenditure. The employee was the administrative head and relative of the partner. Subsequently, the employee immediately gave the amount of salary back as an interest-free unsecured loan to the assessee.

The Assessing Officer (AO) treated such an amount as bogus salary expenses and disallowed it by invoking the provisions of section 40A(2)(b). On appeal, CIT(A) confirmed the AO's disallowance, and the matter reached the Ahmedabad Tribunal.

The Tribunal held that the basic and foremost requirement of allowability of expenditure is that it should be incurred wholly or exclusively for the purpose of business and should not be in the nature of capital or personal expenses as per section 37 read with section 40A. If the sum paid to the persons covered by the provisions of section 40A(2)(b) was found to be excess or illegitimate, though incurred for the purpose of business or profession, it was not allowed as a deduction.

In the instant case, the employee was paid compensation for the work she did and services rendered to the assessee. Therefore, the expenditure was wholly and exclusively incurred for the purpose of business and very much eligible as deduction.

Even if a non-relative person had been paid the said salary, the tax liability would remain the same, and even in such circumstances, the assessee would have been eligible to derive benefit at the rate of 30 per cent as per its taxation rate being a partnership firm. Merely because the employee was a related person, the same cannot be a ground to disentitle the assessee when no extra benefit was given, particularly when the salary was as per the present market rate. The service was rendered by a competent person capable enough to look into allocated responsibility.

Further, payment of salary and granting of interest-free loans are two different transactions, and there is no scope for clubbing the same to attract the provision of section 40A(2)(b). None of the orders passed by the authorities below doubted the services so rendered by the employee nor alleged to have been paid salary excessive or unreasonable, which is sine qua non in invoking the provision of section 40A(2)(b), in the absence of which, the order of disallowance is found to be not sustainable, bad in law and, therefore, quashed.

2. CIT(E) Can't Reject Trust's Registration Application Without Showing Profit-Oriented Objects

In the instant case[2], the assessee-trust filed an application seeking registration under section 12AA. The Commissioner (Exemption) rejected the same on two grounds: firstly, that two objects as available in the Memorandum of Association (MAO)/deed of the assessee related to activities that were commercial/business in nature, and secondly, that the activities carried out by the assessee were not in accordance with the objects of the trust.

On appeal, the Jaipur Tribunal held that the income and expenditure account for the relevant period did not depict any such activity as mentioned in object nos. 3 and 6 of the MAO/deed was carried out by the applicant.

[1] M S Hostel vs. Deputy Commissioner of Income-tax - [2024] (Ahmedabad-Trib.)

[2] Baba Balaknath Seva Sansthan vs. CIT-Exemption - [2024] (Jaipur-Trib.)

The Commissioner (Exemption) relied on a decision by the Apex Court in ACIT(E) v. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC) wherein it was clarified that the assessee advancing general public utility cannot engage itself in any trade, commerce or business or provide service in relation thereto for any consideration. The assessee pointed out that the MAO/deed stated that the activities or objects of the trust specified therein would not be to earn profit.
In the India Trade Promotion Organisation v. DGIT [2015] 371 ITR 333 (Delhi), the High Court of Delhi, while upholding the constitutional validity of the proviso to section 2(15), held that the same would apply where the dominant intention of a trust or the institution is profit-making. Nothing was brought to the department's notice to suggest that any of the objects of the trust was found to be profit-oriented/making.

Thus, the impugned order rejecting the assessee's application for registration under section 12AA deserved to be set aside.

3. Assessee Eligible to File Declaration Under Vivad Se Vishwas Scheme if ITAT Recalled its Order Dismissing Appeal

In the instant case[3], the Assessee filed its return of income for the relevant assessment year. The Assessing Officer (AO) passed the assessment order by making certain additions to the returned income. Assessee filed an appeal before the CIT(A), which was finally disposed of by CIT(A).

Aggrieved by the order of CIT(A), the assessee preferred an appeal to the Tribunal. The Tribunal dismissed the appeal in limine, i.e., without considering the merits of the case. The assessee then filed a Miscellaneous Application (MA) before the Tribunal to recall the order of dismissal of the appeal. The Tribunal allowed the MA and recalled the order of dismissal of the appeal.

Thereafter, assessee filed an application under the Direct Tax Vivad Se Vishwas (VSV) Scheme for settlement of the dispute. However, the application was rejected by the AO on the ground that no appeal was pending as on the specified date i.e., 31-01-2020, and thus the assessee was not eligible for the scheme.

Aggrieved by the order, the assessee filed a writ petition to the Gujarat High Court.

The High Court held that the assessee had to be an appellant as of the specified date, i.e., 31-01-2020, to file a declaration under the VSV Act. Admittedly, the appeal filed by the assessee was not pending as of the specified date. However, in view of the order passed by the Tribunal recalling the order of dismissal of the appeal, the appeal was restored.

Thus, the assessee's appeal had to be considered as pending as of the specified date. Therefore, the High Court held that the order of the AO was not tenable and directed the AO to consider and process the declaration filed by the assessee under the provisions of the VSV Act.

4. Where assessee and other co-owners purchased a property in their names and let out said property to a Government agency and received rent, since rent was being paid by Government agencies jointly in hands of co-owners treating them as a single land lord, said rental income was to be assessed in hands of co-owners as income of an AOP and not in hands of assessee as income from house property under section 22

[3] Atul Roshanlal Gupta vs. Principal Commissioner of Income-tax - [2024] (High Court of Gujarat)

In the instant case[4], the assessee and other co-owners purchased property in their names having specified shares jointly in the property and thereafter constructed godowns and plinths which were rented out to PUNSUP and Punjab Ware Housing Corporation. . The Assessing Officer noted that the rental receipts from these agencies were issued jointly and the amount of rent was also deposited in one bank account. Thus, the income tax authority initiated proceedings to assess the income of rent received by co-owners as income of AOP (Association of Persons).

On appeal, the Commissioner (Appeals) also passed an order holding that income received from Government Agencies had to be assessed in the hands of the co-owners in terms of the provisions of section 26 as the constructed godowns falls in the definition of ''building''.

On further appeal, the Tribunal held that the income received by the assessee was to be assessee as income of the AOP.

On appeal, it was held that the rent was being paid by the Government companies jointly in the hands of co-owners treating them as a single landlord and the amount was also being deposited in the single account. The loans were also raised for construction of the godowns in the name of YS & Co-owners. In view thereof, it is factually not disputed that the action was to be taken by the revenue against the assessee as an AOP.

The order passed by the Commissioner (Appeals) treating the same to be the income received individually on the specified shares is solely based on the sale deed regarding purchase of land. There is no defined share to the rental income and AOP has jointly received the income. There is no division in terms of the law and all of them were co-landlords of each rented out property. Merely if the members of an AOP have been assessed individually, the revenue would not be barred to assess such income in the hands of AOP if the income relates to AOP. The decision taken by the Tribunal, therefore, on the issue of the rental income being that of AOP does not warrant any interference and question is, accordingly, answered in favour of the revenue.

[4] Y. S. & Co-owners v. Income Tax Officer (High Court of Punjab & Haryana) [2024]