Direct Tax Newsletter

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Tax Digest

- Recent case laws

December 23, 2024

NEWS FEED

Switzerland Withdraws India's 'Most Favoured Nation' Status, Citing Nestle SA Ruling

No TDS on Payments to Credit Guarantee Fund Trust for MSEs Referred in Section 10(46B)

Section 197A prescribes that no deduction of tax shall be made, or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in the Official Gazette, in this behalf.

In this regard, the Central Board of Direct Taxes (CBDT) has notified that no TDS shall be deducted under Chapter XVII on any payment received by the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE). The notification has been issued in exercise of the powers conferred by section 197A(1F).

1. Expenses Incurred on Portfolio Management Services Directly Related to Securities Transaction Allowed While Computing Capital Gains

In the instant case[1], the assessee-company was engaged in business of dealing in shares, stocks, debentures, etc. in the line of securities transactions. It claimed expenditure of general administration and Portfolio Management Services (PMS) towards maintenance of securities against income declared under capital gains. The Assessing Officer (AO) rejected the same contending that there was no provisions in section 48 to claim such expenses.

On appeal, the CIT(A) allowed the assessee's claim. Aggrieved by the order, an appeal was filed to the Delhi Tribunal.

The Tribunal held that it was observed that the assessee was dealing in the business of shares and securities. The assessee incurred certain expenses on PMS to monitor such securities. Thus, this expenditure was directly related to the securities transaction. The nature of the transaction demands such expenditures.

Relying on the decision of Pune Tribunal in Deputy Commissioner of Income-tax vs Serum Institute of India Ltd.* [2016] 72 taxmann.com 361 (Pune – Trib.) and Mumbai Tribunal in Nadir A. Modi vs JCIT, Tax 11(3), Mumbai [2017] 88 taxmann.com 868 (Mumbai – Trlb.), wherein it was held that the 'PMS' fees paid by the assessee is an allowable deduction from the capital gains, the Tribunal allowed the claim of the assessee.

With respect to general administrative expenses, it was observed that the assessee has incurred these expenditures on salaries, administration, depreciation etc,. and claimed these expenses in its profit and loss account. In the income tax computation, the assessee computed the income under the head income from business as well as capital gain. The income tax provisions allow the assessees to compute the income under different heads of income and the assessee was allowed to claim the expenses based on the relevant heads of income.

In the instant case, the assessee can claim the general expenses of running the business only under the head business income. Even if there is no income declared under the head business income, the assessee is allowed to claim these expenses as business expenditure, if there is no business income and the assessee is allowed to carry forward the same in case the assessee does not have income under other heads of income other than loss under the head capital gains.

Since the assessee has declared profit under the head capital gains, the assessee is allowed to adjust the same under section 71. Hence, the general administrative expense cannot be claimed under the head capital gains under section 48.

2. Assessee to Pursue Pending Proceedings Before Appellate Authority Instead of Filing Writ Petition

In the instant case[2], the assessee was issued a show cause notice under section 148A(b). The assessee filed an appeal and a review application before the Principal Chief Commissioner under section 264, and both the proceedings were pending. The assessee contended that the impugned order and the impugned notice would stand covered by the

[1] ACIT vs. Vireet Investments (P.) Ltd. - [2024] (Delhi-Trib.)

[2] Mahindra and Mahindra Ltd. vs. Assistant Commissioner of Income-tax - [2024] (High Court of Bombay)

decision of this Court in Hexaware Technologies Limited v. Assistant Commissioner of Income Tax (2024) 464 ITR 430 as also the decision of the division Bench in Siemens Financial Services Pvt. Ltd. v. Deputy Commissioner of Income Tax [2024] 160 taxmann.com 243 (Bombay) in regard to the applicability of section 151 of the provisions of the Act as the sanction had not been granted by the appropriate authority as specified under the said provisions.

Considering the decision of this Court being of the jurisdictional High Courts, the assessee filed a writ petition before the Bombay High Court.

The High Court held that once the assessee availed of an alternate remedy as provided under the Income Tax Act, and if the assessment order as also the notices are contrary to the substantive provisions of section 151A and section 151, as interpreted by Court in Hexaware Technologies Limited and Siemens Financial Services Pvt. Ltd., the Appellate Authority as also the Revisionary Authority being bound by the said decisions of the jurisdictional High Court, need to consider such legal position.

Thus, the assessee was not precluded from raising all such contentions, as raised in the present proceedings, before the said authority.

Accordingly, it was opined that the proceedings which were pending before the CIT(A) as also the Revisionary proceedings, be decided considering the contentions of the petitioner, namely as to whether the impugned assessment order as also the notice under section 148 was illegal when tested on the law as declared by this Court in the decisions mentioned above.

An approach shouldn't be followed when the appellate authority is already involved in proceedings. Writ petitions should be entertained only to adjudicate matters that can be decided by the appellate authority, considering the Court's decisions. As rightly pointed out, entertaining writ petitions in such circumstances would require the Court to entertain all pending matters involving the applicability of its decisions, which is impractical.

Hence, it would be appropriate that the assessee pursues the pending proceedings as filed before the appropriate Appellate Authority. Accordingly, the present proceedings that assail the assessment order are not entertained when an appeal is already filed by the assessee, which is pending. Hence, the petition was disposed of.

3. Legal Heirs Can Raise Contention That Notice Was Issued in Name of Deceased Person

In the instant case[3], a notice under section 148A(b) was issued in the name of the original assessee who had died prior thereto. In response to the said notice, a reply was given by the son of the original assessee stating that his father, the assessee, had passed away.

Thereafter, another communication was issued seeking details of the original assessee's legal representatives. The Chartered Accountant of the legal representative responded to the same. On becoming aware of the legal representatives of the deceased original assessee, an order was passed under section 148A(d).

[3] Ghanyashyam Anil Dhanani vs. Income-tax Officer Ward 17(1)(1) - [2024] (SC)

Subsequently, another order was passed under section 148A(d) in the name of the legal representatives of the deceased-original assessee. Aggrieved by the said order, the legal representatives of the deceased-original assessee filed a Writ Petition contending that the original assessee had died and accordingly, the proceedings for reassessment were vitiated as they were commenced against a dead person.

The High Court disposed of the Writ Petition by holding that the legal representatives could take all contentions available to them except the fact that the initial notice was issued in the name of a dead person.

Accordingly, the matter reached before the Supreme Court. The legal heir contended that the main impediment in the case was that the High Court curtailed the right of legal heirs to take a contention that the impugned Notices were initially issued in the name of a dead person. Solely because the appellant, as a legal representative, subsequently responded to the notices would not imply that the proceeding initiated was valid. It was sought to be contented that the proceedings in fact were vitiated on account of the initial Notices being issued in the name of a dead person and the subsequent participation of the legal representatives in the proceedings before the Assessing Officer would not have cured the initial defect.

The Apex Court held that it was found that the said request made to the Court was reasonable and in accordance with law and therefore, 'paragraph 4' of the impugned order contending that all rights and contentions other than the notice issued to a dead person, is kept open, was set aside and the appellant was permitted therein to take the contention with regard to the initial Notice being issued in the name of a dead person-original assessee being defective and also take all other contentions available to the appellant before the Assessing Officer. Consequently, the impugned orderwas set aside to that extent.

Thus, the appeal was allowed and disposed of in the aforesaid terms.

4. Bitcoin Was Capital Asset Before 01.04.2022; LTCG on Sale of Bitcoin Eligible for Sec. 54F Exemption

In the instant case[4], the assessee was an individual and salaried person. The assessee purchased Bitcoin (cryptocurrency) during the financial year 2015-16 and sold it during the financial year 2020-21. He invested sale consideration in the purchase of the property. The assessee filed return declaring long-term capital gain on the sale of Bitcoin and also claimed exemption under section 54F. The Assessing Officer held that the cryptocurrency was not a capital asset under section 2(14) and made it taxable under section 56 as income from other sources.

On appeal, the CIT(A) had held that Crypto Currency (Bitcoins) was not an asset as per section 2(14). Hence, the transfer as per section 2(47) as Long-Term Capital Gain was not applicable in the case of the assessee, and accordingly, he also confirmed the denial of deduction under section 54F to the assessee.

Aggrieved by the order, an appeal was filed to the Jodhpur Tribunal.

The Tribunal held that the plain natural definition of 'property' as given in the Act is property of any kind held by an assessee, whether or not connected with his business or profession, in which a person owns something of value. Though cryptocurrency/virtual digital asset is also not a currency, it is not an asset

[4] Raunaq Prakash Jain vs. Income-tax Officer - [2024] (Jodhpur - Trib.)

within the meaning of section 2(14). The amendment made in the Finance Act 2022 has defined virtual digital assets (VDA) under section 2(47A), wherein the name given is virtual digital assets.

Thus, considering the plan vanilla meaning before the amendment as is to be understood at the time of purchase & sale of cryptocurrency (bitcoins), which is a right of the assessee attached to the investment made.

If the definition of the capital asset, as outlined in section 2(14), which states that 'property of any kind held by an assessee, whether or not connected with his business or profession,' is interpreted in the manner suggested by Explanation 1 to these sections, it becomes evident that 'property' encompasses and shall always include any right in or related to an Indian company, including the right of management, control, or any other right whatsoever.

Consequently, all rights are considered property, and therefore, the assessee's right in Bitcoin, despite being a virtual asset, qualifies as a capital asset under section 2(14). Consequently, the Assessing Officer's assertion that one must actually own something as property to qualify as a capital asset is incorrect. Even if an individual possesses a right or claim on a property, it is still considered a capital asset under section 2(14).

Further, section 2(47) defines transfer in relation to a capital asset to include the sale, exchange or relinquishment or extinguishment of any right therein. Therefore, in the instant case, the gain on the sale of bitcoin, which the assessee acquired, results in capital gain and is not chargeable under the head income from other sources.

Accordingly, gain on the sale of cryptocurrency was to be taxed under the head capital gain and not under the head income from other sources before the lawmaker made the specific provision in the Act. Since the income on the sale of cryptocurrency is chargeable to tax under the head long-term capital gain, the AO was directed to allow the claim of deduction under section 54F to the assessee.