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

Direct Tax Newsletter

Tax Digest

- Recent case laws

January 27, 2025

CBDT Prescribes Conditions for NRs Engaged in Business of Operation of Cruise Ships for Sec. 44BBC

Notification No. 9 /2025, dated 21-01-2025

The Finance (No. 2) Act, 2024 inserted a new Section 44BBC in the Income-tax Act, 1961, relating to a special provision for computing the profits and gains of the business of operating cruise ships in the case of non-residents.

Section 44BBC provides that a sum equal to 20% of the aggregate of the specified amounts shall be deemed to be the profits and gains of business chargeable to tax under the head "Profits and gains of business or profession" in the case of a non-resident assessee subject to such conditions as may be prescribed.

To prescribe such conditions, the Central Board of Direct Taxes (CBDT) has issued a notification inserting a new rule 6GB to the Income-tax Rules 1962.

1. Assessee Entitled to Sec. 54F Exemption if Claim Made While Filing ITR in Response to Notice Under Sec. 148

In the instant case[1], the assessee-individual executed a development agreement with a firm for the construction of an apartment by transferring his land. The assessee didn't file the return of income for the relevant assessment year and was served a notice under section 148. In response, the assessee filed a return of income admitting total income.

Assessing Officer (AO) issued a notice to the assessee requesting the assessee to show cause as to why the long-term capital gain on the land transfer should not be assessed tax. In response, the assessee submitted an explanation and stated that the assessee had not received any consideration in the relevant assessment year. Thus, the assessee was not liable to tax, and the assessee could claim the total gain as an exemption under section 54F.

Considering that no exemption was claimed under section 54 in return, the AO added long-term capital gain to the assessee's income. On appeal, CIT(A) upheld the order of AO. Aggrieved by the order, the assessee filed the instant appeal before the Tribunal.

The Tribunal held that the assessee was eligible for deduction under section 54F of the Act from the long-term capital gains. Though the assessee claimed while filing the return of income in response to the notice under section 148, Appellate Authorities were not barred from entertaining the fresh claim.

Accordingly, the order of the lower authorities was set aside, and the Assessing Officer was directed to verify the facts regarding acquiring the new asset and allow deduction under section 54F in respect of long-term capital gains.

2. No Additions u/s 69C if Document Seized From Third Party Premises Didn't Contain Name of Assessee Anywhere

In the instant case[2], a search and seizure action under section 132 was carried out in the cases related to a Group, which included the assessee. During the search, ledgers pertaining to the unaccounted payments made to the interior designer for hotel purchases were found and seized from the residential premises of a third person.

The Assessing Officer (AO) was of the opinion that the aforementioned payments were unaccounted for and made additions under section 69C as the assessee failed to establish the source of the expenditure.

On appeal, CIT(A) deleted the additions made by AO and the matter reached before the Mumbai Tribunal.

The Tribunal held that the design agreement entered between the assessee and the interior designer was made after the date of search. Since there was no operative agreement between the assessee and the said interior designer, there was no question of incurring any expenditure during the year under consideration.

[1] Satyanarayana Viswanadha vs. Income-tax Officer - [2025] (Visakhapatnam-Trib.)

[2] DCIT vs. Triton Hotels and Resorts (P.) Ltd. - [2025] (Mumbai - Trib.)[19-12-2024]

Further, the seized annexure being a scanned copy did not contain the name of the assessee anywhere. The said document was found and seized from the residential premises of a third party. Therefore, the presumption was that the said document pertains to such third party. As the name of the assessee was nowhere mentioned in the said document the presumption that it belongs to the assessee did not hold any water and most importantly it did not bear any signature neither of the AO nor of the assessee nor of any witnesses to suggest that it was impounded during the search proceedings.

Accordingly, the additions made by AO were to be deleted.

3. No Additions u/s 69A Relying Upon Statement of Husband Recorded During Survey

In the instant case[3], a survey under section 133A was conducted in the case of the assessee. During the survey, the Assessing Officer (AO) found a cash book belonging to the proprietary concern of the assessee, which showed that a certain sum was deposited in the assessee's bank account during the demonetisation period. Assessee submitted that cash deposited during the demonetisation period was cash withdrawn from bank accounts in the financial year from time to time.

However, AO made an addition on account of the same on the ground that the assessee's husband admitted that the assessee earned said amount from undisclosed sources.

On appeal, CIT(A) held that the statement recorded during the survey was inconclusive and deleted the AO's additions. Aggrieved by the order, an appeal was filed before the Jaipur Tribunal.

The Jaipur Tribunal held that the assessee had been maintaining regular books of account, consisting of cash books subjected to tax audit. AO had certified, after due verification of the entire record, including the cash book, that all entries in the cash book were duly supported with bills and vouchers. It also showed entries of cash deposits in the bank.

It was undisputed that there was a considerable turnover, and most transactions were routed through banking channels. The accounts, including the cash book, were produced before the lower authorities during the assessment & appellate proceedings and were not found any fault with nor were rejected invoking section 145. Therefore, as per the mandate of that provision, they were binding upon the authorities below. Cash withdrawals were made from the bank accounts to meet the day-to-day business requirements and to make deposits in the bank accounts.

Further, a statement was made during the survey under section 133A(3)(iii) read with section 131 and does not have binding evidentiary value as is the case of admission made in the statement recorded under section 132(4). In any case, such admission was not corroborated by any document found during the survey except the incomplete cash book, which was not incriminating. Thus, no reason was found for the statement admitting the bank deposits as income (on behalf of the assessee but not even by the assessee) to be accepted.

Since the assessee had already explained the source of cash deposited, the impugned addition made merely based on a statement recorded during the survey was unjustified, and the same was to be deleted.

[3] ACIT vs. Nisha Jain - [2025] (Jaipur-Trib.)

4. Designated Authority Has No Power to Reopen a Concluded Settlement Under DTVSV Act

In the instant case[4], the assessee filed its return of income for the relevant assessment year and declared its income. Subsequently, notice under section 148 was issued, and the assessment was completed by making certain additions. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A).

During the pendency of the appeal, the Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV Act) was enacted. The assessee made a declaration to settle the tax arrear. The Designated Authority (DA) issued Form No. 3 and Form No. 5, determining the balance amount payable and the amount deposited by the assessee. However, the DA again issued a fresh Form No. 3, which was a modified version of the earlier Form No. 3.

Aggrieved-assessee filed a writ petition before the Delhi High Court contending that the DA had effectively sought to reopen a concluded settlement.

The High Court held that Section 5(2) of the DTVSV Act mandates the DA to determine the amount payable by the declarant within a period of 15 days from the date of receipt of the declaration. Rule 7 of the DTVSV Rules expressly provides that the order of the DA with respect to the payment of the amount made by the declarant as per the certificate granted under section 5(1) shall be in Form No. 5.

It is clear that once a declarant is issued a certificate (Form No. 5) in terms of section 5 of the DTVSV Act, and the declarant deposits the determined amount, the DA is proscribed from initiating any action or proceedings in respect of the 'tax arrear'. The dispute stands settled.

[4] S A N Garments Manufacturing (P.) Ltd. vs. PCIT - [2025] (High Court of Delhi)

It was fairly stated that no provision under the DTVSV Act empowers a Designated Authority to reopen a concluded settlement. As noted above, a plain reading of the provisions of the DTVSV Act indicates that once a final certificate is issued under section 5(1), all disputes regarding the 'tax arrear' stand concluded.

In the instant case, the assessee deposited the determined amount and was issued Form No. 5 by the DA. Thus, all disputes with regard to the 'tax arrear' stood concluded. Therefore, the issuance of the impugned certificate was without the authority of law.