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

April 14, 2025

NEWS FEED

CBDT Notifies 30-04-2025 as the Last Date to File Declaration Under Vivad Se Vishwas Scheme

Notification No. 32/2025, dated 07-04-2025

CBDT Notifies Bonds Issued by HUDCO as 'Long-Term Specified Asset' for Sec. 54EC Exemption

Notification No. 31/2025, dated 07-04-2025

CBDT Notifies Form 'ITR-B' for Furnishing ITR for Block Assessment

Notification no. 30/2025, dated 07-04-2025

1. Surcharge to Be Levied on Private Discretionary Trust Shall Be Computed as per Slab Rates

In the instant case[1], the assessee, Araadhya Jain Trust, a Private Discretionary Trust, filed its return of income for AY 2023–24, declaring income of Rs. 4,85,290. It paid tax at the "maximum marginal rate" as per section 164 read with section 2(29C) of the Income-tax Act.

While processing ITR, the Centralized Processing Centre (CPC) levied a surcharge at the highest rate on the computed tax. The assessee contended that the surcharge should not apply since the total income was below Rs. 50 lakhs. Both the CPC and the CIT(A) rejected this argument, citing that the definition of "maximum marginal rate" includes the highest surcharge, hence applicable regardless of income level.

A Special Bench was constituted by the Hon'ble President of ITAT, in terms of section 255(3) of the Income Tax Act, 1961, to decide the following issue:

" *Whether, in the case of private discretionary trusts whose income is chargeable to tax at maximum marginal rate, surcharge is chargeable at the highest applicable rate or at a slab rates?* "

The Tribunal held that section 2(29C) of the Act defines the maximum marginal rate as the highest slab rate of income tax in the case of an individual or association of persons, as specified in the Finance Act. The section does not make any reference to the levy of surcharge.

The expression 'including Surcharge on income-tax, if any' within the bracketed portion of section 2(29C) of the Income Tax Act, would mean the surcharge as provided in the computation mechanism under the heading 'surcharge on income tax' provided in section 2 of the Finance Act.

The different rates of surcharge on income tax provided under the First Schedule to the Finance Act, 2023 for different slabs of income would become meaningless so far as discretionary trusts are concerned if the highest rate of surcharge is applied to the maximum marginal rate of tax.

In other words, the rate of surcharge has to be determined in terms with the rate prescribed under the schedule to section 2(1) of the relevant Finance Act and not at the maximum marginal rate, irrespective of the quantum of income or the rates provided under the schedule.

The Finance Act contains separate provisions for the levy of surcharge, and there is no reference to the maximum marginal rate in those provisions. Therefore, the surcharge must be computed at the rates prescribed in the Finance Act for the relevant assessment year. The levy of surcharge at the maximum marginal rate was not justified.

Accepting Revenue's view would render the entire slab-based surcharge mechanism meaningless and cause absurd results. Accordingly, it held that a surcharge should be levied based on the slab rates applicable to the total income.

2. No Disallowance of Cost of Improvement Just Because It Wasn't Mentioned in Sale Deed

In the instant case[2], assessee-individual, a non-resident, sold an immovable property during the

[1] Araadhya Jain Trust vs. Income-tax Officer - [2025] (Mumbai-Trib.)

[2] Nagajyothi Myneni vs. ADIT (Int-Taxn.) - [2025] (Hyderabad-Trib.)

relevant assessment year. While computing the long-term capital gains, the assessee claimed the cost of acquisition with indexation, including additional amount spent on cost of interiors and modifications. The assessee declared long-term capital gains in the return of income.

During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee made additional payments for the cost of acquisition, which were not mentioned in the purchase deed. The assessee also made payments for infra expenses and additional interior works, which were not mentioned in the deed. Thus, AO disallowed the claim of the assessee for cost of acquisition and improvement and computed the long-term capital gains accordingly.

Aggrieved by the order, the assessee preferred an appeal to the Hyderabad Tribunal.

The Tribunal held that the assessee paid an additional amount to the seller for the purchase of the property. The seller confirmed the receipt of the amount towards the additional consideration put-up in the property. Once the assessee furnished relevant evidence, including confirmation from the seller, and proved that an additional amount has been paid for the purpose of purchase of the property, it cannot be said that the amount paid by the assessee is not for the purpose of purchase of the property.

Similarly, the assessee paid a sum to the original developer of the property for infra expenses. Although the assessee purchased the property from the seller, the property was under the maintenance from the developer. While transferring the property to the assessee, whatever dues payable to the developer has been cleared by the assessee. This fact has been confirmed by the developer. Therefore, it cannot be said that the payment is not for the purpose of purchase of the property.

Likewise, the assessee claimed that she had paid a sum for carrying out further interior works to the flat after she purchased it. To support her contention, the assessee furnished a bill from the contractor. When the payment is made by cheque and the person who carried out the work has confirmed the payment for the purpose of interior works, merely for the reason of no VAT registration for the vendor, the genuineness of payment cannot be doubted.

Since the assessee furnished relevant evidence to prove payment to the contractor for carrying out interior works, the said payment is in the nature of the cost of improvement to the building, and the same needs to be allowed as the cost of acquisition and improvement while computing long-term capital gains from the sale of property.

3. Section 43CB Not Applicable to Real Estate Developers Selling Self-Constructed Properties

In the instant case[3], the assessee, Aaryan Buildspace LLP, was engaged in the business of real estate development. It filed its return of income for the relevant assessment year in accordance with Accounting Standard-9 ("AS-9") and the ICAI Guidance Note on Real Estate Transactions (2012, Revised) to recognize revenue on execution of conveyance deeds and possession transfers.

[3] Deputy Commissioner of Income-tax vs. Aaryan Buildspace LLP - [2025] (Ahmedabad-Trib.)

The case was selected for scrutiny, and notices under Section 143(2) and Section 142(1) of the Act were issued. The assessee was developing a real estate project on its own land. During the relevant year, 27 units were sold, and revenue was recognised accordingly.

The Assessing Officer (AO) held that since the assessee was engaged in a "construction contract", its income should have been computed under Section 43CB, which mandates revenue recognition on a Percentage Completion Method (PCM) basis. On appeal, CIT(A) deleted the additions. Aggrieved by the order, the AO filed the instant appeal before the Tribunal.

The Tribunal held that the AO's reliance on Section 43CB is misplaced because this provision applies only to construction contracts and contracts for providing services, whereas the assessee is a real estate developer engaged in constructing and selling residential units on its own land.

The legislative intent behind Section 43CB of the Act and its placement within the framework of the Act clarify that it governs income recognition for contractors undertaking construction projects for clients, not for developers executing real estate projects on their own account.

Section 43CB was introduced through the Finance Act 2018, with a retrospective application from 01.04.2017 to regulate the computation of income from construction contracts and contracts for providing services. The section explicitly mandates that profits and gains from a "construction contract" or "contract for services" must be determined based on the PCM in accordance with the Income Computation and Disclosure Standards (ICDS).

The phrase "construction contract" is critical to understanding the section's applicability, as it indicates that the provision applies only to contractors executing projects on behalf of a third party where a contractual obligation exists. In accounting and legal parlance, a construction contract refers to an agreement where a contractor undertakes to execute construction work for a specified price under a contract with a customer. These contracts can include fixed-price contracts, cost-plus contracts, and time-and-material contracts, but they inherently require the contractor to perform work for another party.

Since the assessee does not provide construction services to any third party under a contract, it does not fall within the ambit of Section 43CB of the Act, which is specifically designed to regulate the revenue recognition of contractors executing construction projects for clients rather than developers selling self-constructed properties.

4. Step-Siblings Are Relatives Under Income Tax Act; Gifts Received From Them Are Exempt

In the instant case[4], the assessee, a non-resident individual, did not have any income or source from India and, therefore, was not filing any return of income in India. The assessee had made an application under section 197 for lower deduction of tax on account of the sale of property.

The property was received by the assessee as a gift from Ms. Vidhie Mukerjea. However, the gift was given by a step-sister to a step-brother. The assessee contended that the step-sister and step-brother are relatives as per the meaning contained in Section 56(2) of the Act.

The Assessing Officer (AO) rejected the assessee's claim and held that the stepbrother and stepsister could not be treated as relatives. Thus, the receipt of the property without consideration was chargeable to tax under section 56(2)(vii). The CIT(A) also

[4] Rabin Arup Mukerjea vs. ITO - [2025] (Mumbai-Trib.)

confirmed the AO's action. The matter then reached the Mumbai Tribunal.

The Tribunal held that there are five kinds of brother and sister relations in common parlance. These are: Firstly, Uterine brothers and sisters – where the mother is the same; Secondly, Consanguine brothers and sisters – where the father is the same; Thirdly, Germane (also, biological) brothers and sisters – where both the parents are the same; Fourthly, Step, that is, step brothers and step-sisters – where both the parents are different; and lastly, Adopted children- who would become brother/sister through law.

The term 'relative' as per the Black's Law Dictionary, includes a person related by affinity, which means the connection existing as a consequence of marriage between each of the married persons and the kindred of the other. If the aforesaid Dictionary meaning is to be referred and relied upon, then the term 'relative' would include step-brother and step-sister by affinity. If the term 'brother and sister' of the individual has not been defined under the Income Tax Act, then the meaning defined in common law has to be adopted, and in the absence of any other negative covenant under the Act, brother and sister should also include step-brother and step-sister who, by virtue of the marriage of their parents, have become brother and sister.

Accordingly, the gift given by the step-sister to the step-brother falls within the definition of 'Relative', that is, they are to be treated as brother and sister as per Section 56(2)(vii). Therefore, the property received by the brother from the sister cannot be taxed under section 56(2).