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## Tax Digest

- Recent case laws

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### CBDT chief urges tax officials to prepare for transition to new Income Tax Act

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Central Board of Direct Taxes (CBDT) Chairman Ravi Agrawal has asked the Income Tax Department to be ready and proactive for the transition to the new direct tax law, which is scheduled to be implemented from April 1, calling on officials to work with clarity and purpose.

## 1. No Penalty For Inadvertent Excess Section 54F/54B Claim

In the instant case<sup>1</sup>, the Assessee-individual filed his return of income for the relevant assessment year. The case was selected for limited scrutiny, and a notice under section 143(2) was issued to the assessee. During the assessment, it was noticed that the assessee claimed excess deduction under sections 54B and 54F.

The Assessing Officer (AO) initiated penalty proceedings under section 271(1)(c) for furnishing inaccurate particulars of income. AO contended that the assessee claimed an excess deduction in the return of income. However, the assessee rectified the mistake immediately upon the issuance of the notice under section 143(2). The return was revised, and the assessee paid the due taxes.

Unsatisfied with the explanation, the AO levied the penalty, which was confirmed by the CIT(A). The matter then reached the Pune Tribunal.

The Tribunal held that the assessee furnished all the particulars of income properly in the income tax return and correctly reported the Long-Term Capital Gain (LTCG). It is also not the case of the Revenue that the claim of deduction was not as per the provisions of the Act, and that any of the conditions provided under section 54F/54B of the Act has not been fulfilled.

The only mistake pointed out by the AO was the incorrect claim of a higher deduction under sections 54F/54B of the Act. It is further an admitted fact that the assessee revised the computation of income during the assessment proceedings itself.

All these facts clearly demonstrate that the assessee committed an inadvertent mistake by making a wrong claim for deduction. However, it is not a case of concealment of particulars of income or furnishing inaccurate particulars. Therefore, the penalty under section 271(1)(c) cannot be levied.

## 2. Substitution Of Shares On Amalgamation Taxable U/S 28

In the instant case<sup>2</sup>, the core issue before the Supreme Court was whether the receipt of shares of the amalgamated company in lieu of shares of the amalgamating company, when the original shares were held as stock-in-trade, gives rise to taxable business income under section 28, or whether no income can be said to accrue until such substituted shares are actually sold.

The Supreme Court held as under:

The Supreme Court first examined the statutory scheme of the Income-tax Act and drew a clear distinction between the fields occupied by Sections 45 (capital gains) and 28 (business income). It observed that while Section 45 is triggered only upon a “transfer” of a capital asset, Section 28 is much wider in scope and taxes “profits and gains of business or profession” irrespective of the mode in which such profits arise, whether in cash or in kind, and without requiring any transfer in the strict legal sense. Therefore, the definition of “transfer” in section 2(47) is not determinative for the purposes of section 28.

The Court then analysed the legal nature of amalgamation and held that although in company law it operates as a statutory substitution whereby the amalgamating company ceases to exist, and its shareholders receive shares of the amalgamated

<sup>1</sup> Amol Vasant Deshmukh vs. ITO, Ward-6(2), Pune - [2026] (Pune Trib.)

<sup>2</sup> Madhur Jindal Equipment Leasing Consultancy Services Ltd. v. CIT [2026] (Supreme Court of India)

company, this does not conclude the tax enquiry. Relying on earlier precedents including *Grace Collis* [2001] 115 Taxman 326 (SC), the Court reiterated that amalgamation does involve a transfer in the tax sense, but more importantly, for the purposes of section 28, the real question is whether the assessee has, in the commercial sense, realised its trading asset and obtained something of determinable value in its place.

The Supreme Court emphasised that income under section 28 can arise even without a sale or exchange in the conventional sense. It noted that business profits may be realised in kind, and what is relevant is commercial realisability. If stock-in-trade ceases to exist and is replaced by another asset of ascertainable value, and the assessee is in a position to commercially exploit or realise that asset, then a real business profit can be said to have arisen.

Applying these principles to amalgamation, the Court observed that shares held as stock-in-trade constitute trading assets. Upon amalgamation, those shares are extinguished, and the assessee receives in substitution shares of the amalgamated company with a definite and determinable value. This substitution, in substance, amounts to the realisation of the trading asset, even though the consideration is shares rather than cash. The Court rejected the assessee's argument that taxation must wait until the actual sale of the substituted shares. It held that this approach confuses timing of sale with accrual of business income. Once the trading asset is converted into another asset of ascertainable value through a statutory process and the assessee acquires a vested and realisable right in it, the profit has already accrued in the commercial sense, even if the assessee chooses to hold the asset further.

### **3. Sec. 12AB Registration Denied For Captive Solar Plant**

In the instant case<sup>3</sup>, the Assessee-*Infosys Green Forum* was a Section 8 company. It was incorporated to promote commerce, art, science, sports, education, research, social welfare, religion, charity, or the protection of the environment, or any other object. The company was formed to undertake the corporate social responsibility (CSR) activities on behalf of *Infosys Limited*, pursuant to the amendment to Rule 7(4) of the Companies (Corporate Social Responsibility Policy) Rules, 2014. The company was set up to generate clean and green solar power. It was a non-profit company and was entitled to supply power to its 100% shareholder (*Infosys Ltd.*) at an agreed-upon rate. The company applied for registration under section 12AB of the Act.

The CIT(E) rejected the assessee's application for registration under section 12AB of the Act. Aggrieved by the order, the assessee filed an appeal to the Bangalore Tribunal.

The Tribunal held that the assessee was set up to generate power for its 100% shareholder (*Infosys Ltd.*) only. There was no benefit to the public at large or a section of the public at all. The dominant object of the whole of the exercise is to get the power for *Infosys Limited* through captive solar power plant shown as CSR activity and then made an attempt to claim the benefit of section 11, 12 of the Income tax Act by obtaining registration under section 12AB of The Act and further to obtain recognition under section 80G(5) of the Act.

Assessee's case was not different from the case that a donor sets up a school for his own children and claims it as 'Educational activity', a company setting

<sup>3</sup> *Infosys Green Forum vs. Income-tax Officer (Exemptions) [2026] (ITAT Bangalore)*

up a hospital exclusively for its own promoters/employees and claiming it as medical relief, setting up its own yoga centre for itself and claiming it as 'Yoga', etc. In all these cases, there was no public benefit.

Further, the Hon'ble Supreme Court in CIT v. Dawoodi Bohara Jamat [2014] 43 taxmann.com 243 (SC) has held that the word 'charity' connotes altruism in thought and action and involves an idea of benefiting others rather than oneself. It cannot be said that a purpose would cease to be charitable even when public welfare is intended to be served.

Therefore, the CIT(E)'s order was upheld, and the assessee's appeal was dismissed.

#### **4. Unexplained Investment Addition Deleted For Lack Of Evidence**

In the instant case<sup>4</sup>, the assessee was covered in a search operation. During the search, the Assessing Officer (AO) found undated cheques from the assessee. In response, the assessee submitted that no cash loan was given by any of the assessee of the group to the companies whose cheques in question were found during the search.

The assessee, in the normal course of its business and on account of a mutual understanding with the parties involved, had taken cheques that were not required to be deposited. However, AO made additions to the assessee's income, contending that the undated cheques were issued in lieu of unaccounted cash loans.

The matter reached the Gujarat High Court.

The High Court held that the assessee submitted that it had taken the cheques from the parties in question, which were not required to be deposited. The assessee had discharged its onus of proving the identity and genuineness of the transactions. The assessee also demonstrated that the cheques in question were received in the normal course of business and that no cash loan was involved in the transaction.

During the search operation, no incriminating evidence was found to support the contention that the assessee had given any cash loan. Thus, the AO made the entire addition based on a presumption. Further, no cash trail or loose papers were found to support the presumption drawn by the AO. The cheques found during the search were also undated, and the AO did not make any inquiries of the parties who issued them.

AO made additions solely on the basis of presumptions and surmises, not on any evidence. Thus, the AO's additions were deleted.

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<sup>4</sup> Principal Commissioner of Income-tax Central vs. Priya Blue Industries (P.) Ltd. [2025] (High Court of Gujarat)