



Direct Tax Newsletter

16, Strand Road, Diamond Heritage,
Room No. H-703,
Kolkata – 700001

Ph: 033-46002382/ 40032841
Email id: info@acbhuteria.com

Tax Digest

- Recent case laws

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1. Tax Recovered Illegally Must Be Refunded

In the instant case¹, the Assessee filed its return of income reporting total income at nil. Transfer pricing adjustment of Rs. 113,11,80,000 were proposed by the Id. Transfer Pricing Officer (TPO) vide order dated 26.10.2023 which was objected to by the assessee before the Id. Disputes Resolution Panel (DRP).

The proposed adjustment was confirmed by the Id. DRP based on which the final assessment order was passed by the Id. Assessing Officer on 23.10.2024, assessing total income at Rs. 113,11,80,000, raising a demand of Rs. 23,30,67,630.

Against this final assessment order, the assessee filed an appeal before the Tribunal. However, during the pendency of the appeal, the assessee filed an application before the Tribunal for the refund of demand already recovered by the Assessing Officer (AO) during the pendency of the appeal.

Assessee contended that post passing of rectification order under section 154 by the learned AO, there remained no demand to be recovered from the assessee. Since there was no tax payable by the assessee, there was nothing to be stayed



Union Budget 2026 is set to be presented by Finance Minister Nirmala Sitharaman at the end of this week on February 1, 2026

Source : timeofindia.com

The Budget speech usually begins at 11:00 AM. This is

¹ **TLG India (P.) Ltd. vs. Assistant Commissioner of Income-tax - [2026] (Mumbai - Trib.)**

under the present stay application before the Tribunal.

The Mumbai Tribunal held that the assessee was seeking direction from the Tribunal for the refund of the money which was recovered unlawfully during the pendency of the rectification application. For the purpose of grant of refund, the Tribunal has the power to ensure that the assessee is not left high and dry only on account of illegal and high-handed action on the part of the revenue and its Assessing Officer.

In the instant case, it was not merely a case of procedural defect adopted for recovery of demand during the pendency of the rectification application. Instead, such a recovery of tax resulted in double jeopardy in the hands of the assessee, well established by the outcome of the rectification order passed under section 154 by the learned AO. Thus, the prayer for the refund of recovery made by the learned AO leading to double jeopardy carries a heavy force in favour of the assessee. Therefore, the Tribunal exercised powers under section 254 of the Act to direct the AO to grant the refund of recovery of tax made by him to the assessee for the year under consideration.

2. Project Completion Method Allowed In JDAs

In the instant case², the assessee, a real estate company, was engaged in real estate activity. During the survey proceedings, it was found that the assessee had entered into a Joint Development Agreement (JDA) with the developer. In respect of these joint development projects, the assessee adopted the project-completion method for recognising revenue/income.

² Deputy Commissioner of Income-tax vs. Anushka Estates [2026] (Bangalore - Trib.)

Considering that the developer adopted the percentage completion method of accounting, the Assessing Officer (AO) contended that the assessee should also recognise the revenue accordingly. AO added to the assessee's income under the percentage-of-completion method. The CIT(A) deleted the additions made by AO, and the matter reached the Bangalore Tribunal.

The Tribunal held that the assessee was only a landowner and not a developer or contractor. The assessee had granted the developer development rights to develop the property owned by the assessee. The developer was responsible for the construction of premium residential apartment buildings. The assessee, being the landowner, was the sole legal and beneficial owner of the scheduled property.

The assessee was recognising the revenue based on the ultimate registration of the sale deed. Since no part of the property had been registered under a duly registered sale deed, the amount received by the assessee was shown as a liability in the balance sheet. The assessee remained the owner of the land throughout the development of the property, and there was no transfer of ownership to the developer. At the highest, possession alone was given under the agreement and that too for a specific purpose.

The revenue cannot be thrust upon the assessee to adopt the percentage completion method of accounting merely because the developer was following it. The percentage completion method, as one of the recognised methods under the construction contract, is not applicable to the assessee firm, which is a landowner.

Since the assessee adopted the project completion method for revenue recognition and has consistently followed it over the years, the accounting method is also not subject to any change by the revenue.

3. Life Interest Assignment Not Transfer; Sec. 50C Inapplicable

In the instant case³, the assessee, an individual, was holding a 20 per cent undivided share, along with his four brothers, in an ancestral family trust property. Out of his 20 per cent share, the assessee assigned 10 per cent undivided share in the said property to his nephew for a consideration of Rs. 28 lakhs vide registered deed.

The Assessing Officer (AO) issued a show cause notice stating as to why the provisions of section 50C should not be invoked. The assessee contended that what was transferred was only rights in land and building, and therefore, section 50C was not applicable. Unsatisfied with the assessee's response, AO completed the assessment accordingly. On appeal, CIT(A) affirmed the order of AO. The aggrieved assessee filed the instant appeal before the Tribunal.

The Tribunal held that the assessee had not transferred land or building in his own right. The deed did not convey the corpus of the immovable property, nor did it divest the trust of its ownership in the land or building. The ownership of the immovable property continued to vest in the trust at all material times, and the assessee merely assigned a limited, determinable and beneficial interest arising therefrom.

In law, a life interest represents a limited estate, the duration of which is co-terminous with the life of the holder and which stands extinguished upon his death. Such an interest does not confer absolute ownership of the immovable property, nor does it vest in the holder the power to deal with the corpus of the property as an owner, which is a necessary incident of ownership under property law. The life tenant is entitled only to use, occupy or enjoy the income or usufruct of the property during his lifetime, subject to an overriding obligation to preserve the property for the benefit of the remaindermen.

This principle is statutorily reflected in sections 108(B)(m) and 108(B)(o) of the Transfer of Property Act, 1882, which, though framed in the context of leases, embody the broader doctrine that a person in limited possession cannot commit acts destructive or permanently injurious to the property. Where such a life interest arises under a trust arrangement, the position is even more restrictive. Under the Indian Trusts Act, 1882, the legal title vests in the trustee, and the beneficiary's enjoyment is circumscribed by fiduciary and preservative obligations imposed on the trustee for the benefit of all beneficiaries, including remainder men.

The beneficiary holding a life interest acquires only a beneficial interest and not ownership of the trust property. Accordingly, the invocation of section 50C in the facts of the present case was not warranted.

4. Agricultural Land Claim Rejected For Lack Of Proof

In the instant case⁴, the appellant-assessee sold an extent of 5.21 Acres of land at Kakkanad village for Rs.977.10 Lakhs vide registered Sale Deed dated

³ Vanraj Ranchhoddas Merchant vs. Income-tax Officer - [2026] (Mumbai - Trib.)

⁴ M J George vs. Deputy Commissioner of Income-tax - [2026] (High Court of Kerala)

13.2.2006. He reported the income from the sale of land as agricultural income and claimed it to be exempt from tax. However, the Assessing Officer (AO) rejected the assessee's claim and taxed the income as capital gains.

The assessee preferred an appeal to the CIT(A), and the CIT(A) granted relief to the assessee. Aggrieved by the order, an appeal was filed to the Tribunal. The Tribunal reversed the order of CIT(A) and confirmed the additions made by the AO. The matter then reached the Kerala High Court.

The High Court held that the assessee did not produce any evidence other than a certificate from the Village Officer that the land in question was agricultural land, which certificate went against the revenue records itself, which pointed to the land being in the nature of 'Purayidam', which translates as dry land suitable for the construction of houses.

In addition, the assessee also produced copies of some returns showing that he had returned an amount slightly over Rs. 1 lakh as agricultural income derived from the property over many years prior to the sale of the land. The appellant, however, did not produce any other cogent evidence such as wages paid to agricultural labourers, purchase invoices in respect of manure, fertilizers etc., purchase invoices pertaining to agricultural implements, if any, used in connection with the agricultural operations, the details regarding the source of water for irrigation purposes, etc.

It is on account of the absence of any cogent evidence adduced by the appellant that the appellate tribunal proceeded to hold, based on the evidence on record, that the appellant had not established that the land sold by him was agricultural in nature. The above findings of the appellate tribunal are entirely factual and, in the absence of any evidence adduced by the assessee, cannot be said to be arbitrary or perverse for the

purposes of maintaining an appeal under Section 260A of the Income Tax Act.