

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Narayan Atal

S.11DDC r.w.s. 11 Anonymous donation

Application of 85% or otherwise is an altogether different aspect. For availing exemption u/s 11 etc., an assessee needs to separately pass the test u/s.115BBC subject to the exceptions. If a particular receipt turns out to be anonymous donations, the same gets caught within the mischief of section 115BBC and hence mars the exemption of income to that extent notwithstanding that the assessee applied 85% of such anonymous donations for the objects of the trust. Section 13(7) clearly provides that nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section - Shriram Bahuuddeshiya Sevabhavi Sanstha v. ITO(E) [2020] 119 taxmann.com 203 (Pune - Trib.)

14A – Actual expenditure incurred could only be disallowed

Under section 14A of the Act, the only expenditure, which was proved to be incurred in relation to earning of tax free income, could be disallowed and such provision could not be extended to disallow the expenditure, which was assumed to have been incurred for earning tax free income. Therefore, to apply the provisions of Section 14A of the Act, the Assessing Officer should have recorded a finding as to how sub-section (1) of Section 14A of the Act would stand attracted. In the absence of any such finding, the disallowance made was not justifiable – CIT v Celebrity Fashion Ltd. [2020] 119 taxmann.com 426 (Madras)

S.40(A)(3) Cash payment not to be disallowed in case bank account is attached

The words “extent of banking facilities available” has to be interpreted in the facts of a given case and all such cases will not be covered under clause (j) of Rule 6DD which has been subsequently deleted. In the instant case, banking facility was available but the bank account could not be operated because of an order of attachment

passed by the ESI Department. The assessee has entered into an agreement for conversion on job work basis. The assessee is required to act as a prudent businessman, so that the job work is completed to his satisfaction with optimum quality. This has led the assessee to effect payments in cash.

If the assessee has a reasonable explanation, then the proviso under section 3A would stand attracted and the assessee would be entitled to relief. It may be true that merely because the payee is identifiable, it will automatically exonerate the assessee. The fact that the payee was identifiable and not a fictitious person would go to show the bonafides of the transaction and this is what is required to be considered from the angle of a commercially expedient and prudent business house. PCIT v. Sumukha Synthetics [2020] 119 taxmann.com 234 (Madras)

S.41(1) Reversal of impairment provision

The reversal of the impairment provision created by the assessee in the earlier years in respect of the financial asset was merely a 'book entry' without any corresponding amount payable by anybody or any possibility of receiving any benefit or money or money's worth. The a write back of a provision can be made taxable only if the same was claimed as a deduction in the earlier year when it was created – ITO v. Scheme A1 of ARCIL CPS 002 XI Trust [2020] 119 taxmann.com 216 (Mumbai - Trib.)

S.50 B – Slump sale not applicable

The transfer of appellant's non transmission and distribution business in exchange of issuance and allotment of equity shares under a scheme of arrangement approved by the High Court under sections 391 and 393 of the Companies Act, 1956 is not slump sale under section 50B of the Income-tax the transfer, pursuant to approval of a scheme of arrangement, is not a contractual transfer, but a statutorily approved transfer and cannot be brought within the definition of the word 'sale' - Areva T & D (I) Ltd. v. CIT [2020] 119 taxmann.com 171 (Madras)

S. 54 Impact of mere adding name in the agreement

As per the provisions contained in proviso (ii) to section 54F, this proviso will get triggered if the assessee purchases any residential house other than the new asset within a period of one year after the date of transfer of the original asset. To say that a property is purchased by a person, mere inclusion of his or her name in the purchase deed is not enough because this may happen for various reasons including this reason also that the other person who is really purchasing the property wanted to include the name of his relative in the purchase deed for some emotional issues. This action will no doubt give rise to some ownership rights on the property in question to that second person but such rights may not be on this account that the second person has purchased the property. For purchasing the property, a person has to pay consideration and if both persons named in the purchase deed says that such consideration is paid in its entirety by any one of them only, then the purchase of property is by that person who paid the consideration in spite of this fact that some ownership rights are created in favour of the other person also, who did not pay the consideration because his name is also included in the purchase deed. For triggering the provisions of the proviso (ii) to section 54F (1), the pre requirement is this that the assessee has purchased one more residential house other than the new asset within one year after the date of transfer of the original asset and this is not enough that some ownership right is acquired by him in such property within such time which has not accrued to him on account of purchase. Hence, it has to be the case that there is such purchase by the assessee and mere acquisition of some right is not enough - Anil Dev v. DCIT [2020] 119 taxmann.com 328 (Bangalore - Trib.)

S. 57(iii) Deduction of expenditure

The purpose of expenditure is relevant in determining the applicability of Section 57(iii) and the purpose must be making or earning of income. The assessee in order to cover the cost of interest payable to the creditors for the unpaid period, invested the surplus in fixed deposits and earned interest. The amount earned by way of interest was paid to the lenders and creditors. Thus, there is a nexus between the interest paid to the creditors on the unpaid balance and interest earned on the deposits. The interest expenditure was incurred wholly and

exclusively for the purpose of earning the interest income and therefore, the assessee is entitled to deduction of the interest income under section 57(iii) of the Act Best Trading & Agencies Ltd. v. DCIT [2020] 119 taxmann.com 129 (Karnataka)

S. 244A Interest on delayed refund

the interest on the delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount. Accordingly, it also includes the interest on the delayed refund – PCIT v. Solan District Truck Operators Transport Co-op. Society [2020] 119 taxmann.com 100 (Himachal Pradesh)

S. 263 – Revision

The close scrutiny of Section 263 it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act firstly, the order of the Assessing Officer is erroneous and secondly, that it is prejudicial to the interest of the revenue on account of error in the order of assessment. Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case. The question of lack of enquiry/inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income-tax under section 263 of the Act - CIT v. Chemsworth (P.) Ltd. [2020] 119 taxmann.com 358 (Karnataka)