

Important judgements and Updates

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SLP Appeal (C) No. (S) 5689 of 2020 Supreme Court of India Against Assessee

Issues discussed and addressed:

Condonation of Delay in Filing of Appeal

Facts of the Case:

It is stated that after the order passed by the Income Tax Appellate Tribunal on 28-2-2014, the copy was obtained on 10-3-2014. The limitation to file appeal being of 120 days expired on 8-7-2014. The appeal could not be preferred for the reason that legal cases were looked after by Late Padam Prakash Singh, the Manager. He was not keeping well and ultimately died on 22-11-2017. The assessee could realise about non-filing of the appeal in the month of March, 2019 and immediately after consulting the counsel, appeal was preferred. The prayer is to condone the delay of four and half years.

Held by the Authorities:

The main excuse of delay in filing of appeal is in reference to the Manager, who said to be suffering from many ailments. There is nothing on record to show that Late Padam Prakash Singh was suffering from ailments and was such an ailment which did not permit him to take initiative for filing of appeal. It was otherwise duty of the assessee to watch the affairs of its firm and in any case, Late Padam Prakash Singh died on 22-11-2017. At least thereupon, the assessee was expected to file appeal immediately but it was filed almost after one and half years. The delay in filing the appeal is not of few days or months but is of more than four and half years.

Taking note of the aforesaid, the Honourable High Court did not find any ground to condone the delay. Accordingly, the application for condonation of delay is dismissed. SLP Filed against the decision of High Court is dismissed .

Manekji Mota Charitable Trust Special Leave Petition (Civil) Diary No(s). 8007 of 2020 Supreme Court

Issues discussed and addressed:

Registration of Trust

Facts of the Case:

Director (Exemption) rejected application filed by assessee-trust for registration under section 12A on ground that 29 per cent of its gross receipts were expended on making donations for religious purposes which was not in accordance with objects of trust.

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Held by the Authorities:

High Court by impugned order held that where undisputedly 71 per cent of receipt of assessee-trust were being spent in accordance with its object, it was established that trust was genuine and a partial expenditure which was not authorized by assessee-trust would not make trust non-genuine and only consequences would be that benefit of section 11 would not be available to that extent. At the stage of registration, this issue is premature.

Jamnagar Area Development Authority R/Tax Appeal No. 221 of 2020 Gujarat High Court

Issues discussed and addressed:

Section 2(15)

Facts of the Case:

The AO came to the conclusion that assessee was engaged in the Area Development and Town Planning and carrying out the activity of general public utility. According to the AO, the respondent - assessee was not carrying out any charitable activities and was squarely covered by proviso 1 & 2 to Section 2(15) r/w Section 13(8) of the Act and ultimately came to the conclusion that the respondent-assessee is not eligible for any of the exemption claimed under section 11 and 12 of the Act and accordingly passed assessment order in question.

Held by the Authorities:

Respondent Assessee, urban development authority was created under Gujarat Town Planning and Urban Development Act, 1976, for framing and implementing town Planning Scheme and to carry out object and purpose of Town Planning Act, since no services were rendered to any particular trade commerce or business and collection of fees and cess was incidental to object and purpose of Act, assessee can be said to be providing general public utility services and, thus, assessee was entitled to exemption under section 11

Judgments Relied Upon by the Authorities:

Ahmedabad Urban Development Authority 396 ITR 323 (Guj.)

Ajay Raj ITA No. 1184/Delhi/2019 Delhi ITAT

Issues discussed and addressed:

Non Service of Notice u/s 143(2)

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Facts of the Case:

The assessee filed his return of income disclosing total income at Rs. 1,53,300 and agricultural income of Rs. 2,60,000. The return was selected for scrutiny under CASS guidelines and during the course of assessment proceedings, the assessee was asked to explain the funds deposited in the four bank accounts operated by the assessee but since no explanation was forthcoming, the assessing officer treated the peak credits in the bank accounts as unexplained and made addition of Rs. 1,42,45,849. Assessment was completed at an income of Rs. 14,99,150.

Held by the Authorities:

It is seen that notice under section 143(2) of the Act was issued to the address at "85, Kumharon Wali Gali, Village Khampur, Delhi" which was not served on the assessee whereas the correct address is "C-83, Village Khampur, Delhi". As per the assessment records, i.e., return of income filed by the assessee as well as assessment order, address of the assessee is "C- 83, Village Khampur, Delhi". Subsequent Notices, dated 28-1-2011, 19-7-2011, 1-12-2011 as well as Questionnaire dated 19-7-2011 have been issued at the address "C- 83, Village Khampur, Delhi". Thus, it is an undisputed fact that notice under section 143(2) of the Act was issued at the wrong address and, therefore, it can be safely concluded that the same could not have been served upon the assessee at all.

Where notice under section 143(2) was served to assessee on address, which was none of addresses as specified in rule 127(2) of Income Tax Rules, 1962, assessment order passed on basis of such invalid notice was set aside.

KEC-PLR-KPIPL-JV ITA Nos.7763, 7764/Del/2018 Delhi ITAT

Issues discussed and addressed:

Diversion of Income vis a vis Disallowance u/s 40A(2b)

Facts of the Case:

Assessee was a joint venture of three entities, namely, 'K', 'A' and 'U'. It was awarded work contract, which was further sub-contracted to 'K'. AO alleged that the work was subcontracted to a related party under section 40A(2)(b). Further, as assessee failed to file any evidence that payment of expenditure incurred to related party was fair and reasonable as per prevailing market price, the AO held that the expenses incurred by the assessee were excessive and accordingly he made disallowance of 4% of expenditure out of total payment made to related party.

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Held by the Authorities:

As per assessee, it was mere a pass through entity in the form of joint venture created only for the purpose of bidding of contract and all the work contracted to the JV was carried out by K and other two partners were given credential fee @ 2%. Thus, payment made to K was mere diversion of income and was not related to any expenditure incurred by the assessee. Further, on going through section 40A(2)(b), it was clear that the disallowance under said section was applicable to expenditure and not to receipts. Since AO made disallowance under section 40A(2)(b) in respect of income which, in his opinion, assessee ought to have earned, rather than certain expenses incurred, he was not justified in doing the same as provisions of section 40A(2)(b) would not be attracted in instant case and hence, the disallowance made under section 40A(2)(b) would not be sustainable.

Judgments Relied Upon by the Authorities:

ITO v. M/s Kec-Delco Vraha (JV) vide ITA No. 2327/Del2016 order dated 18-9-2018 for A.Y. 2011-12

Soma TRG Joint Venture v. CIT reported in (2017) 398 ITR 425 (J&K)

CIT v. Oriental Structural Engineers Pvt. Ltd. reported in (2015) 374 ITR 35 (Del)

Hosanna Ministries IT Appeal Nos. 558 (VIZ) 2018 & 286 (VIZ) 2019 Visakhapatnam ITAT

Issues discussed and addressed:

Corpus Donation if trust is not registered u/s 12A

Facts of the Case:

Assessee is a registered society registered under the Societies Registration Act, filed its return of income by declaring income of Rs. 25,960/-. The assessee-society has received corpus donations of Rs.3,33,11,930/- and shown in the balance sheet under the head 'corpus fund'. During the course of assessment proceedings, the Assessing Officer has observed that the assessee has received donations/voluntary contributions to the extent of Rs.3,33,11,930/-. During the A.Y. 2014-15, the assessee has not filed the 12A registration certificate and therefore the provisions of section (11)(1)(d) donations received are exempt from tax only if the assessee-society is registered u/sec. 12A of the Act. He called the assessee by letter dated 25/11/2016 to explain as to why this amount cannot be taxed as per section 2(24)(iia) of the Act.

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Held by the Authorities:

The donations/voluntary contributions received by the appellant society are outside the taxations, even for the period prior to its registration u/sec. 12AA. Hence, the Assessing Officer is directed to delete the disallowance/addition made.

Judgments Relied Upon by the Authorities:

R. B. Shriram Religious and Charitable Trust v. CIT [[1988\] 39 Taxman 28/172 ITR 373 \(Bom.\)](#)]

Indian Society of Anaesthesiologists v. ITO [[2014\] 47 taxmann.com 183/64 SOT 178 \(URO\) \(Chennai - Trib.\)](#)]

ITO v. Vokkaligara Sangha IT Appeal Nos. 281 to 285 (Bang.) of 2014

Important updates

- a. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.
- b. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.
- c. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.