

Important judgements and Updates

Update No 26/ 2021

Govind Singh Grewal ITA NO 3232/DEL/2018 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 2(42A) To determine the taxability of capital gain arising from sale of property, it is the date of allotment of property which is relevant for the purpose of computing the holding period and not the date of registration of conveyance deed.

Facts of the case with respect to issue No 1:

The property was allotted to the assessee on 30th October, 2007 and the assessee entered into commercial space buyer's agreement with DLF City on 22.01.2008 and made the payments during the period from 30th October, 2007 to 18th May, 2010 amounting to Rs. 80,33,579/-. The conveyance deed in favour of the assessee was registered on 24th May, 2011 and the possession was taken by the assessee on 19.01.2011. Since this property was sold on 21.09.2012 for a sale consideration of Rs. 1,25,00,000/-, therefore, the property was sold within 16 months of the purchase of the property and, therefore, the gain arising from this property is short-term capital gain and not long-term capital gain and the assessee is not entitled to any indexation benefit.

Held by the Authorities with respect to Issue No 1:

By making the payment to the builder and having received allotment letter in lieu thereof, the assessee will be holding capital asset and, therefore, the benefit of indexation has to be granted to the assessee on the basis of payments made by him for acquiring the said asset. Therefore, the assessee should be given the benefit of indexation.

Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. CIT vs. K. Ramakrishna, reported in [363 ITR 59] = [TS-5293-HC-2014(Delhi)-O]
- b. Mrs. Madhu Kaul vs. CIT, reported in [363 ITR 54] = [TS-5051-HC-2014(Punjab and haryana)-O],
- c. B.R. Associates Pvt. Ltd. vs. ACIT 2014 (6) TMI 933
- d. Praveen Gupta vs. ACIT reported in 2010 (8) TMI 820
- e. Jitendra Mohan vs. ITO reported in 2006 (11) TMI 371
- f. CIT vs. Anilaben Upendra Shah [(2003) 262 ITR 657] = [TS-5890-HC-2001(Gujarat)-O]
- g. CIT vs. Jindas Panchand Gandhi, reported in [279 ITR 552] = [TS-5795-HC-2005(Gujarat)-O]

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Update No 26/ 2021

Acharya Jiyalal Vasant ITA NO 4193, 4194/MUM/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 **Section 2(15)** The activities of the studio are carried on in order to achieve the main object of the Trust and cannot be construed as business. As mentioned earlier, since the trust is engaged in education, the proviso to section 2(15) does not apply as clarified by CBDT Circular No. 11 dated 19.12.2008.

Facts of the case with respect to issue No 1:

The assessee filed its return of income for the assessment year (AY) 2010-11 along with Income and Expenditure Account, Balance Sheet and Audit Report in Form No. 10B declaring total income at Rs. Nil. The assessee is registered u/s 12A and 80G of the Act. It received studio charges of Rs.16,72,197/- from various artists (73 parties) in the year under consideration. The Assessing Officer (AO) observed that the activity of making available the studio to the artists was conducted with an intention to make profits in the shield of charitable activities. The AO arrived at the above finding on the basis of his observation on the continuity, magnitude, quantum and frequency of the activities. Accordingly, the AO brought to tax income of studio charges as business income, by applying provisions of section 11(4A) of the Act and further disallowed expenditure of Rs.5,00,151/- incurred by the assessee towards the "Ajivasan Sounds" from the allowable expenditure on the object of the Trust.

Held by the Authorities with respect to Issue No 1:

The assessee is a charitable trust engaged in imparting education in the field of classical music and light music based on the Gurukul Philosophy, where the student learns by virtually staying with the Guru. The institution was founded in 1932 by Acharya Jialal Vasant and has 84 years of rich heritage. The institution has a repute for providing scientific training in Hindustani Classical Music and Light Music. The trust has a studio namely "Ajivasan Sounds" which is used for the purpose of training students in professional singing and also the same is made available to various artists for the purpose of recording.

In the instant case, the maintenance of studio is intrinsic and in pursuance of the objects of the assessee which is education. It is well understood that teaching of Indian Classical Music is within the field of "education". The activities of the studio are carried on in order to achieve the main object of the Trust and cannot be construed as business. As mentioned earlier, since the trust is engaged in education, the proviso to section 2(15) does not apply as clarified by CBDT Circular No. 11 dated 19.12.2008.

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Judgments Relied upon by the Authorities with respect to Issue No 1:

Shri Thyaga Brahma Sangeet Sabha [188 ITR 160 (Mad)] = [TS-5377-HC-1990(Madras)-O]