

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

S. 11(1) Running of hostel by educational institution is not a separate business

The activity of running the hostel for the students of dental college is not a separate business activity and surplus income from the hostel fee cannot be treated as profit and gains of a separate business or commercial activity of the trust. It is held that the exemption under section 11(1) of the Act cannot be disallowed to the assessee. *Daya Nand Pushpa Devi Charitable Trust v. ACIT* [2021] 128 taxmann.com 118 (Allahabad)

S. 37(1) Payment of commuted value of rent in year

The assessee had the option to pay the lease rental on year-to-year basis for 99 years or as a one-time expenditure. Assessee paid one-time lease rent was incurred by it to run its business both, effectively and efficiently. The commuted and discounted value of the one-time lease rent was eleven (11) times the annual rent; which in absolute terms was much lower than the amount that would have accrued as rent over the entire tenure of the lease i.e. 99 years. Given the facts of the case, the matching principle would have no applicability. The assessee chose to incur the liability of a crystallised amount in the period relevant to the assessment year in which payment was made. It was also held that:

- i. The expenditure was not in the nature of capital expenditure or a personal expense.
- ii. It was expended fully and exclusively for the purposes of the business and;
- iii. It did not fall within the realm of any provision of the Act which prohibited the appellant/assessee from claiming this deduction.

Coforge Limited v. ACIT [2021] 128 taxmann.com 99 (Delhi)

S.37(1) Revenue expenses to be allowed irrespective of the fact it is treated as prepaid or deferred revenue in books

If expenses incurred by assessee are revenue in nature which does not give any enduring benefit to the assessee, then those expenditure should be allowed as deduction in the year of incurrence, irrespective of the fact that those expenditure are treated as prepaid expenses or deferred revenue expenditure in books of account of the assessee. If the expenditure incurred is capital in nature, then same needs to be capitalized in the books of account and depreciation should be allowed while computing profits of the year. *DCIT v. Hinduja Leyland Finance Ltd.* [2021] 128 taxmann.com 148 (Chennai - Trib.)

S. 144, 144B E-Assessment order passed without issue of draft assessment order

Assessment order issued under section 144 read with Section 144B of the Act for the assessment year 2018-2019 as well as demand notice issued under section 156 of the Act and notice for initiating penalty proceedings issued under section 270A and 271AAC(I) of the Act are set aside, since assessment order without issuing a mandatory draft assessment order or a show cause notice to the tax payer. However, the revenue is given liberty to pass a fresh assessment order in accordance with law and the petitioner is also given liberty to challenge any action of the revenue in accordance with law, in the event taxpayer is aggrieved by the same. *Anju Jalaj Batra v. National E-Assessment Centre* [2021] 128 taxmann.com 165 (Delhi)

S. 144B – Personal hearing during E-assessment proceedings

There is a substantial variation made by the AO in the taxable income of the tax payer. Therefore, the tax payer ought to have been granted a personal hearing in the matter. The failure to grant a personal hearing has vitiated the impugned assessment order. *Balraj Hire Purchase (P.) Ltd. v. National Faceless Assessment Centre* [2021] 128 taxmann.com 190 (Delhi)

148 Re-assessment order set aside when order passed in the name of only one legal heir.

Reassessment notice was served upon three legal heirs of assessee out of seven and assessment had been framed in name of one heir of assessee. The AO is directed to issue notice to all the legal heirs of the deceased assessee and decide afresh as per the provisions of the law after giving a reasonable and sufficient opportunity of being heard to the assessee. - *Tahar Singh v. ITO* [2021] 127 taxmann.com 783 (Delhi - Trib.)

276C Delayed payment may not lead to prosecution

Company had voluntarily declared its intention to pay tax and 80% of the tax was paid prior to the complaint. The Income-tax Department was instructed regarding the dues from the GST Department and there is no denial to the fact that the Income-tax Department had issued Notice to GST Department for remitting the refund directly to their Department. Certain tough circumstances were also pleaded by the Company regarding demonetisation and implementation of GST, the Textile Industry facing huge financial crisis, which had affected the recovery of tax liability determined by the accused Company of Rs. 13,90,27,650/- was not controverted by the Income Tax Department and to that payable tax, as per the self-assessed Return of income, the Company had already paid Rs. 7,28,45,394/- and further amount of Rs. 3,83,55,045/- was to be directly paid by the GST Department and as such amount of Rs. 11,12,00,439/- was to be adjusted against GST refund which constitute the 80% of the total tax liability. The accused Company has stated the reasons for the delay and expressed readiness to pay the balance of Rs. 2,78,27,211/-.

Delayed payment under the provisions of the Act may call for penalty or interest but by no stretch of imagination in the circumstances as pleaded by the petitioners, could be construed as an attempt to evade the tax so as to entail prosecution of the petitioner for the alleged offence of Section 276C(2) of the Act. Thus, in the considered opinion of this Court, the prosecution initiated against the petitioners is illegal and tantamount to abuse of process of law and required to be quashed. *Ganga Devi Somani v. State of Gujarat* [2021] 128 taxmann.com 154 (Gujarat)

Undisclosed foreign assets

The mere account opening form where the assessee is mentioned as the beneficial owner of the account mentioning details of his passport as an identification document, does not necessarily, in absence of any other corroborative evidence of the beneficial ownership of the assessee over that for an asset cannot lead to taxability in the hands of the assessee Under the Black Money Act. *ACIT v. Jatinder Mehra* [2021] 128 taxmann.com 152 (Delhi - Trib.)