VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
AUGUST 2017

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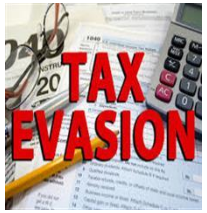
Supreme Court Rulings of the month

Lease agreement with own family shouldn't be considered when it is made for tax evasion



The assessee had leased out his property to his own family members, who in turn had sub-leased it to outsiders on much higher rentals. Assessment in case of assessee was completed by treating the rent received by the lessees of the assessee as rental income of the assessee. On appeal, the Commissioner (Appeals) upheld the assessment order passed by the Deputy Commissioner of Income-tax on the ground that it was in accordance with section 23(1). On second appeal, the Tribunal partly allowed the appeal of the assessee. On further appeal the High Court held that the Tribunal had recorded the finding of fact that the nature of leases executed by the assessee being bogus and structures being raised by the assessee himself, it would be proper to include the net rental value to the income of the assessee. Assessee on further appeal to Supreme Court.

Apex Court disposed of the appeal and held that "***Going by the nature of transaction, a clear finding of fact is arrived at by the authorities below that a devise was made by the assessee herein to show lesser income at his hand and becau****se of this reason only he purportedly entered into a lease agreement with his wife, son and daughter-in-law in respect of the aforesaid property of which he is paying by letting them at a very nominal rates and allowing his family members to sub-let the same at a much higher rents.* ***Once it is found that the income in fact belongs to the assessee and he was the right person for taxing the said income, it was permissible for the Income-tax Authorities to tax the said income at the hands of the assessee****".*

Source: SC in the case of Maneklal Agarwal Vs Deputy Commissioner of Income Tax,
Civil Appeal no. 9315 to 9319 of 2017, date of publication August 11, 2017

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High Court Rulings of the month

HC slams AO for denying TDS credit to HUF merely because TDS certificates were issued in name & PAN of Karta

The assessee, a HUF, invested the funds belonging to the HUF in RBI taxable bonds. Inadvertently it made such investment in the name of karta and PAN of Karta was mentioned instead of HUF. RBI while deducting TDS issued certificates in the name of Karta. AO while processing the return did not give claim to the assessee. AO filed a revison petition before the Commissioner but he rejected the same holding that on account of the mismatch of PAN reflected in the TDS certificate and that of the assessee, the credit could not be granted.

The High Court held that the source of the funds which came to be invested with the RBI was that of the HUF. The interest income, therefore, would belong to the HUF. At the same time, it is equally undisputed that the investment was made in the name of Karta in his individual capacity and not as a karta of the HUF. The PAN given to

RBI was also that of the individual and, therefore, TDS was deducted by the RBI while paying interest to karta indicating his PAN.

In exercise of powers given in section 199, rule 37BA of the Income Tax Rules 1962 has been framed.

Under sub-rule (2) of rule 37BA where whole or part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person and not to the deductee provided the three conditions contained therein are satisfied. These conditions are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificate for deducting tax at source in the name of such a person. Invariably in all cases such procedure would have to be completed before a person can rightfully claim credit of tax deducted at source where the TDS certificate shows the name and PAN of some other person.

In the instant case, however, many years have passed since the event arose. The facts are not seriously in dispute. The HUF has already offered the entire interest income to tax. The department has also accepted such declaration and taxed the HUF. In view of such special facts and circumstances, the court directs the **department to give such credit to the assessee upon Karta filing an affidavit before the department that the sum invested** in the RBI does not belong to him, the income is also not his and that he has not claimed any credit of the tax deducted at source on such income for the relevant assessment year

Source: HC of Gujarat in the case of Naresh Bhavani Shah(HUF) Vs CIT, Special Civil Application no. 9352 of 2015, date of publication August 11, 2017

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Provision which denies double relief to trust on purchase of capital asset does not have retro-effect

High Court held that *"We do not agree with the Revenue. The amendment, inserted specifically with effect from Assessment Year 2015-2016 seeks to disturb a vested right that has accrued to the assessee. The amendment does not purport to be clarificatory, on the other hand the Explanatory Memorandum makes it applicable only w.e.f. A Y 2015-16 and application of the amendment retrospectively would certainly lead to a great deal of hardship to the assessee. We are thus of the view that the provisions of section 11(6) of the Act inserted with effect from 1.4.2015 shall operate prospectively with respect to assessment year 2015-2016 only".* Case is decided in favour of the assessee.

Source: HC of Madras in the case of Director of Income Tax Vs Medical Trust of the Seventh Day Adventists, [2017] 84 taxmann.com 202 (Madras),date of publication August 11, 2017

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Non-recovery of tax due of company couldn't be recovered from director without issuing SCN

The assessee was a director in one of the private company. The said company has unpaid outstanding tax demand. Assessing Officer

proceeded against assessee on premise that assessee was a director of said private company and, she was liable to discharge such liability under section 179.

In instant appeal, the assessee contended that before passing the impugned order, no show cause notice was issued. No other form of opportunity was granted to the assessee petitioner that why such recovery should not be made nor the order contains any ground why such recovery was necessitated from the director of the company. Thus, the said order was unjustified.

It was noted by the Tribunal that not even a single notice on record was found to be issued to any of the directors why order under sub-section (1) of section 179 should not be passed for whatever reasons that may be available at the command of the income-tax authority. The notices, which are referred to, are all issued to the company. These notices are in the form of recoveries or reminders of unpaid tax or penalty. None of these notices contain even a reference to any recoveries being made personally from the directors for the failure of the company to discharge its tax dues.

In the result, the impugned order u/s 179(1) was set side by contending that assessee director had not been given any opportunity to prove that non-recovery of tax due against company could not be attributed to any gross negligence, misfeasance or breach of duty on her part in relation to affairs of company.

Source: HC of Gujarat in the case of Susan Chacko Perumal Vs Assistant Commissioner of Income Tax,

Special Civil Application No. 9822 to 9828 of 2017,date of publication August 11, 2017

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ITAT wasn't competent to make addition under different section if it wasn't subject matter of appeal

The assessee was a partner in a firm, wherein he introduced certain amount of capital. Notice u/s 148 was issued to the assessee to explain the source of such capital. In reply to the said notice, the assessee submitted that he had received a gifts of certain amounts from MKK and ZB. The gifts were received through banking channel. In order to prove the aforesaid gift transactions, gift deeds were also produced before the authorities. The statement of the two donors were also recorded under section 131 and they proved the factum of the gift.

The AO held that gifts were not genuine as these were held to be unnatural and aforesaid amounts were added as undisclosed income of assessee under section 68. On appeal, the Commissioner affirmed the said order.

On further appeal, the Tribunal, held that the addition made by the AO u/s 68 and sustained by the Commissioner (Appeals) could not be sustained. However, the Tribunal proceeded to add the aforesaid amount as the income of the assessee under Section 69-A.

High Court held that the use of the word 'thereon' is important and it reflects that the Tribunal has confined itself to the questions, which are arising or are subject matter in the appeal and it cannot be travelled beyond the same. The power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and **it is not open to the Tribunal to adjudicate any other question or an issue, which is not in dispute and which is not the subject matter of the dispute in appeal.**

When said income could not be added under section 68 and Tribunal was not competent to make said addition under section 69A entire

order of the Tribunal stand vitiated in law. Accordingly, the Tribunal was not competent to make any addition under section 69A and as the same was not subject matter of the appeal before it.

Source: HC of Allahabad in the case of Commissioner of Income Tax, Barielley Vs smt. Sarika Jain,

Income Tax Appeal No. 435 of 2008 ,date of publication August 16, 2017

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Appellate Tribunal Rulings of the month

Section 54F relief allowable even when multiple flats are sold to purchase one big flat

During the year, the assessee sold 5 house properties and invested sale consideration received in construction of another property. The assessee filed return of income on 30/09/2011 declaring total income of Rs.1, 73, 68,240/-. In the return of income filed, the assessee claimed deduction under section 54F of the Income-tax Act, 1961. In scrutiny assessment, AO disallowed claim of the assessee u/s 54F, recording reasons that on the date of transfer of the original asset, the assessee owned more than one residential house and therefore it was not eligible for deduction under section 54F of the Act. The assessee submitted that it was having only one residential house at D-3/8 Vasant Vihar, New Delhi, apart from the house at 9, Mehandi Farms for which he claimed deduction under section 54F of the Act.

CIT(A) allowed the claim of the assessee by contending that *"It is **further observed that there is no bar in section 54F for claiming deduction second time or third time for the same property if cost of the property is within the capital gain arisen to the appellant**. In the instant case, total capital gain arisen to the appellant in all the three years 2009-10 to 2011-12 was less than the cost of construction of the residential property at 9, Mehendi Farms, Bhati Mines, Chhatarpur, New Delhi"*

Revenue for the same contended that the assessee had already availed deduction under section 54F of the Act for investment in construction of the property at Mehandi Farms and which constituted another residential property and therefore, the assessee cannot be allowed deduction under section 54F of the Act for investment in construction of the same residential property.

ITAT ruled in favour of the assessee by contending *"**the assessee is entitled for deduction under section 54F of the Act because house property at 9, Mehandi Farms was under construction during the year under consideration and it cannot be said as another residential house owned by the assessee**. As the assessee owned only one residential house at D-3/8 Vasant Vihar, New Delhi, the assessee is entitled for deduction under section 54F Act for investment in construction of the house property at 9, Mehandi Farms"*

Source: ITAT in the case of Assistant Commissioner of Income Tax Vs Mohinder Kumar Jain,

IT Appeal No. 5254 (Delhi) of 2014,date of publication August 18, 2017

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Press release/Notifications/Instructions of the month

CBDT extends due date for tax audit and return filing from 30th September to 31st October

In respect of all assessee covered under clause (a) of Explanation 2 to sub- section (1) of section 139 of the act, CBDT hereby extends the 'due-date' prescribed therein for filing the return of income as well as various reports of audit prescribed under the Income-tax Act which are required to be filed by the said 'due date' from 30th September, 2017 to 31st October, 2017.

Source: CBDT order u/s 119 dated August 31, 2017

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Government extended PAN-Aadhar Linking due date to 31st December 2017

CBDT hereby extends the due date of linking of Aadhar with PAN to 31.12.2017.

Source: CBDT order u/s 119 dated August 31, 2017

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New Form no. 29B for MAT audit

CBDT has notified new Form 29B for MAT audit. The subsituted form is now available for efiling.

Source: NOTIFICATION NO. GSR 1028(E) [NO.80/2017 (F.NO.133/23/2015-TPL)], DATED 18-8-2017

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CBDT notifies bonds of 'Indian Railway Finance Corporation Limited' for section 54EC relief

The central Government notifies that any bond redeemable after three years and issued on or after the 08th August 2017 by the Indian Railway Finance Corporation Limited is termed as 'long term specified asset' for the purpose of availing the benefit under section 54EC.

Source: Notification No. 79/2017/F.No. 370142/18/2017-TPL dated August 08, 2017

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