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HC sets aside CBDT's order u/s 119 refusing to admit belated refund claim filed by a habitual late filer of return

Artist Tree (P.) Ltd. v. Central Board of Direct Taxes, Bombay High Court in Writ Petition No. 3087 OF 2006

Date of pronouncing the order: December 4th, 2014

Held: CBDT could not refute admitting belated refund claim filed by an assessee on the ground that assessee was a habitual late filer of return of income and wanted to avoid scrutiny by late filing, especially when there was no malafide intention of assessee behind late filing of return.



The real test to determine delay in such cases is that the petitioner should come to the Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. This

does not mean or imply that the applicant seeking condonation of delay is absolved of the requirement to establish genuine hardship and sufficient cause.

Similarly, the length of delay is not invariably the crucial factor. What is really important is the acceptability of the explanation offered. In every case of delay, there may be some lapse on the part of the party concerned. The Tribunal ruled that in matters of condonation of delay,

a liberal approach needs to be adopted and further the State should not ordinarily plead hyper technical plea of limitation to avoid return of amounts due to an assessee.

The circumstance that the accounts were duly audited within due date of filing of return was not a circumstance that could be held against the assessee. This circumstance, on the contrary added force to the explanation furnished by the assessee that the delay in filing of returns was only on account of misplacement of the TDS Certificates. For condonation of delay, what was really important was the acceptability of the explanation offered by the assessee rather than length of delay. Explanation offered by assessee that TDS certificates got misplaced due to shifting of office was not bogus. Hence, it could be said that the assessee had obtained any undue advantage out of delay in filing of Income Tax Returns

Accordingly, the delay in filing the Return of Income for the Assessment Year 1997-1998 was condoned. An acceptable explanation was offered by the assessee and a case of genuine hardship was made out. Accordingly, the impugned order made by the CBDT was to be set aside. The delay in filing the Return of Income for the relevant Assessment Year was to be condoned and Return of Income was directed to be admitted for consideration.

The jurisdictional Assessing Officer was to be directed to scrutinize the Return of Income and to examine the claim for refund on merits in accordance with law.

Investment in property under construction not to be treated as a 'purchase'; qualifies for 3-year investment period (for construction) for exemption under section 54F

Mrs. Jyoti Arun Kothari v. ITO [TS-737-ITAT-2014, (Mum)]

Date of pronouncing the order: December 16th, 2014

The Mumbai Income-tax Appellate Tribunal (Tribunal), in the case of Mrs. Jyoti Arun Kothari (taxpayer), has allowed a claim for exemption under section 54F of the Income-tax Act, 1961 (the Act) against long-term capital gains arising on the sale of a share in an ancestral property. The Tribunal held that investment in under-construction residential property within a period of 3 years from date of sale of property was eligible to claim exemption under section 54F of the Act.

The taxpayer, an individual, sold her share in an ancestral property on 12 April 2007, resulting in a long-term capital gain of approximately INR 7 million. On 15 October 2007, she invested the capital gains under the Capital Gain Account Scheme (Scheme) with the State Bank of India. In her return of income for assessment year 2008-09, the taxpayer claimed exemption under section 54 of the Act. In lieu of the taxpayer's paying the booking amount of INR 0.5 million, M/s Pinaki Projects (Developer) issued an allotment letter dated 10 April 2009. The amount of INR 0.5 million was paid by the taxpayer to the Developer on 11 April 2009. On 30 May 2009, the taxpayer entered into an agreement with the Developer to acquire a residential property under construction. The taxpayer appropriated the money deposited under the Scheme to pay for the acquisition. The agreement was registered

on 10 June 2009, and the Developer handed over the possession of the fully constructed flat in November 2009. During the course of assessment proceedings, the tax officer (TO) asked the taxpayer to explain why exemption under section 54 of the Act should be allowed. In reply, the taxpayer agreed to withdraw the claim of exemption and the TO denied the exemption claimed in the return of income.

The Tribunal held that section 54F of the Act was a beneficial provision and, therefore, should be construed liberally. The case of the taxpayer fitted into the requirements of the beneficial provisions of section 54F of the Act read with CBDT circulars. Hence, the taxpayer was entitled to claim exemption under section 54F of the Income Tax Act.



The ruling reinforces the position that the beneficial provisions of the Act need to be construed liberally, by keeping in view the intention behind their introduction. By adopting

a holistic view of the transaction in question, the Tribunal emphasized the importance of the 'look at' test to ascertain the true nature of transactions. This decision highlights the fact that if there is sufficient evidence to prove that a capital gain was invested in residential property under construction, the completion of construction or the occupation of the property is not a requirement of law.

No disallowance under section 14A unless exempt income is earned during the year

CIT-IV v. Holcim India Private Limited

Citation: TS-640- HC-2014(Delhi)

Date of pronouncing the order: December 16th, 2014

The Delhi High Court (HC) has recently held in the case of Holcim India Private Limited (the taxpayer), that there could be no disallowance of expenditure for earning of exempt income (section 14A of Income-tax Act, 1961 (the Act)) in case exempt income was not earned during the year.



The taxpayer was a holding company having investment in another cement company. During the relevant assessment year under consideration, the income tax officer had disallowed business expenditure of the taxpayer stating that it had not commenced business activity.

The Commissioner of Income-tax (Appeals) held that although the business had commenced activity, the expenditure was disallowed [under section 14A of the Act] as it had been incurred for earning dividend income which was a tax-exempt income. As per the provisions of the Indian Tax Laws, expenditure incurred for earning tax exempt income was disallowed under section 14A of the Act.

However, the Income-tax Appellate Tribunal (Tribunal) ruled in favor of the taxpayer. As per the provisions of the Indian Tax Laws, expenditure incurred for earning tax exempt income was disallowed under section 14A of the Act. However, the Income-tax Appellate Tribunal (Tribunal) ruled in favor of the taxpayer.

India signs first bilateral APA with Japan

On December 19th, 2014, the Central Board of Direct Taxes (CBDT) signed a bilateral Advance Pricing Agreement (APA) with a Japanese Company. This is India's first bilateral APA which has been signed for a period of five years. CBDT was [proud to announce that this bilateral APA was finalized in the short time of one and a half years, compared to the time it takes internationally to finalize such APAs.

As per the Business Standard News Paper dated December 19th, 2014, this bilateral APA appears to be in the case of Mitsui, which is one of the largest general trading companies in Japan, operating in diverse business ventures including infrastructure and energy. This APA will provide certainty to the company operating in India and avoid conflicts over sharing of taxes between India and Japan, thereby reducing transfer pricing disputes.

The APA programme was introduced to bring about certainty and uniformity in transfer pricing matters of multi-national companies and reduce litigation. APAs are expected to improve the investment climate of the country and also to provide a base platform for the smooth functioning of transfer pricing regulations in India.

Capital Gains Liability to arise in the year of execution of the JDA which grants possession over the land through irrevocable license.

ITO v. Sri N.S.Nagara

Citation: ITA No. 676/Bang/2011-AY 2007-08, ITAT, Bangalore

Date of pronouncing the order: December 12th, 2014

In a Joint Development Arrangement, there is landowner on one side and a developer on the other side. The developer agrees to construct at his own cost the entire developable area and reserve a certain pre-agreed constructed area for the landowner in consideration of the landowner allowing the developer to develop the property.

A major debatable issue is to ascertain as at what point of time transfer is deemed to take place in terms of section 2(47)?



Recently, the Bangalore Bench of Income Tax Appellate Tribunal in the case of Sri. N.S. Nagaraj held that the moment the owners of the land hand over the possession of land to the developer under a Joint Development Agreement (JDA), a right to receive the developed area would accrue to the owners and would result in Capital Gains Tax Liability in the

hands of the owners. Further, full value of consideration is the cost of construction incurred by the Developer on the Taxpayer's share of constructed area, because the taxpayer would receive the constructed area in lieu of the land given to the developer.

Bare reading of Section 2(47) of the Act reveals that in order to determine capital gain as arisen to the taxpayer, there are three ingredients:

- There must be a capital asset;
- It must have been transferred during the relevant year
- Capital Gain must have arisen to the taxpayer of such asset

The JDA provided that the owners of the land would get 50% of the share in the total constructed area. Further, as per the terms of the agreement, the owners had given an irrevocable license to the developer to enter and develop the property. A power of attorney had also been executed in favor of the developer to enable him to acquire various permissions, grants and licenses required to commence construction on the property. Also the developer was authorized to avail loans from financial institutions.

Therefore, in the event of relinquishment of rights by the owner, the taxpayer had received an absolute right to receive developed area under the arrangement and therefore, capital gains tax gets attracted on the taxpayer in the year of entering into the Joint Development Agreement itself. The Tribunal held that transfer within the meaning of section 2(47) of the Income Tax Act, 1961 had taken place and the owners were assessable for long term capital gains on such transfer.

CBDT directs AOs to stop coercing taxpayers for admitting undisclosed income during search/survey proceedings



The CBDT has issued a letter dated 18.12.2014 pointing out that instances and complaints of undue influence or coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches or Surveys conducted by the Department. It is pointed out that that many such admissions are retracted in

the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light The CBDT has drawn attention to earlier Instructions and Guidelines issued by the CBDT from time to time through which the Board has emphasized upon the need to focus on gathering evidences during Search or Survey and to strictly avoid obtaining admission of undisclosed income under coercion or undue influence.

The CBDT has also issued the warning that any instance of undue influence or coercion in the recording of the statement during Search, Survey or Other proceeding under the Act and/or recording a

disclosure of undisclosed income under undue pressure or coercion shall be viewed by the Board adversely.

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