Desai Saksena & Associates

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Friday Tax Alert

ITAT quashed section 56(2)(x)(b) addition as agreement & part payment made in 2013 before section came into force

Brief Summary:

Where Assessee had purchased a property for Rs. 29.97 lakhs which had been registered at a stamp duty value of Rs. 1.04 crores on 30-10-2018, since Assessee had entered into an agreement fixing amount of consideration for said immovable property in 2013 and a part of consideration had been paid by way of account payee cheques through a bank account, provisions of section 56(2)(x)(b) were not attracted.

FACTS OF THE CASE:

1. The Assessee had purchased a property for Rs. 29.97 lakhs which had been registered at a stamp duty value of Rs. 1.04 crores on 30-10-2018.

2. The Assessing Officer noting a difference of Rs. 73.67 lakhs between the declared consideration and the stamp duty value, made additions of said amount under section 56(2)(x)(b).

3. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.

4. On appeal to the Tribunal:

CONCLUSION:

On going through the provisions of section 56(2)(x)(b), since the Assessee has entered into an agreement fixing the amount of consideration for the immovable property in 2013 and an amount of Rs. 18.71 lakhs have already been paid in the year 2013, i.e., a part has been paid by way of account payee cheques through a bank account, it is to be held that the provisions of section 56(2)(x)(b) are not attracted in the case of the Assessee. Therefore, the addition made by the Assessing Officer is hereby deleted.

[2025] 179 taxmann.com 53 (Ahmedabad - Trib.) in the case of Javidbhai Ahemadbhai Mansuri v. Income-tax Officer

Delay in verification of Form 10BB condoned as caused by CA's inadvertent error; rejection order quashed: HC

Brief Summary:

Where delay in verification of Form No. 10BB by Assessee-trust was explained by stating that delay had occurred because its Chartered Accountant failed to prompt or instruct authorized person of

Assessee to verify audit report on e-filing portal before due date of filing return, since Assessee would suffer grave hardship if delay was not condoned and exemption was denied merely on this count, delay was to be condoned.

FACTS OF THE CASE:

1. The petitioner/Assessee filed its return of income on 30-10-2018 declaring NIL income after claiming exemption under sections 11 and 10(23C)(vi). The Audit Report in Form No. 10BB was obtained on 29-9-2018 and the same was uploaded on the Income Tax portal on 27-10-2018. The due date for filing the said audit report was upto 31-10-2018 for assessment year 2018-19. However, the said Form No. 10BB was verified on the e-filing portal only on 19-1-2019. As per the petitioner Institute, the said delay in verifying the Form No. 10BB occurred because they were awaiting instructions for verification from their Chartered Accountant. Hence, there was a delay of 81 days in verifying Form No. 10BB, though the same was uploaded on the Income Tax portal on 27-10-2018.

2. Subsequently, the Assessing Officer issued intimation under section 143(1) denying the abovementioned claims of exemption. Thus, a tax demand was also raised for the year under consideration. In the interregnum, the petitioner preferred a request/application for rectification before the Assessing Officer, which was rejected and before the Jurisdictional Assessing Officer, which was pending till date. The petitioner Institute also preferred an appeal before the National Faceless Appeal Centre, Delhi (NFAC) against the intimation issued under section 143(1).

3. During the pendency of the said appeal, the petitioner filed an application for condonation of delay before the Respondent No.1/Principal Commissioner under section 119(2)(b) seeking condonation of delay of 81 days in filing Form No. 10BB. Subsequently, the NFAC passed an order directing the Principal Commissioner to verify and allow the claim of exemption to the petitioner subject to the condonation of delay under section 119(2)(b).

4. The Principal Commissioner, by the impugned order, refused to condone the delay on the ground that no 'reasonable cause' was shown for the aforesaid delay. Thus, the Principal Commissioner concluded that there was 'negligence' and 'lack of due diligence' on the part of the petitioner in filing Form No. 10BB.

5. On Writ Petition.

CONCLUSION:

- ✓ From the record, it is found that the delay has been explained by the petitioner by stating that the delay has occurred because the Chartered Accountant failed to prompt/instruct the authorized person from the petitioner institute to verify or authorize the Audit Report in Form No.10BB on the e-filing portal before the due date of filing of the return. Thus, though the said Form No.10BB was uploaded by the Chartered Accountant on the portal on 27-10-2018 i.e., within the due date, the same was verified only on 19-1-2019 causing a delay of 81 days. However, the Principal Commissioner refused to accept the same.

- ✓ Having considered the matter in its entirety, it is viewed that the petitioner institute would suffer grave hardship if the delay is not condoned and the exemption is denied to them only on this count. The petitioner institute, which is a charitable educational Institute, ought not to be foisted with such a liability because of the inadvertent error of its Chartered Accountant.

- ✓ Considering the facts and circumstances of the case, it is viewed that the delay ought to be condoned. Accordingly, the impugned order dated 25-2-2025 passed by respondent No.1 under section 119(2)(b) is quashed and set aside.

- ✓ Now that the impugned order is quashed, the delay on the part of the petitioner in filing Form No. 10BB is also hereby condoned.

[2025] 178 taxmann.com 723 (Bombay) in the case of Institute of Actuaries of India v. Commissioner of Income-tax, (Exemption)

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