

# DESAI SAKSENA & ASSOCIATES

16<sup>th</sup> August, 2024

## **Friday Tax Alert**

### **From:**

**Tax Team of Desai Saksena and Associates  
Chartered Accountants**

CA Varsha Nanwani (Senior Manager - Taxation)  
Vikas Jogle (Manager - International Taxation)  
CA Neelu Dusseja (Senior Manager – Indirect Taxation)  
CA Neha Patel (Manager - Taxation)  
CA Ajay Sachani (Manager - Taxation)  
Digvijay Hirwani (Assistant Manager - Taxation)  
Alok Sharma (Deputy Manager - Indirect Taxation)

### **Contacts:**

**If you have any questions or would like to have additional information on the topics covered in this alert, please email one of the following DSA professionals:**

- ✓ CA Varsha Nanwani (Senior Manager – Taxation)  
[varsha@dsaca.co.in](mailto:varsha@dsaca.co.in)
- ✓ Vikas Jogle (Assistant Manager – International Taxation)  
[vikas@dsaca.co.in](mailto:vikas@dsaca.co.in)
- ✓ CA Neelu Dusseja (Senior Manager – Indirect Taxation)  
[neelu@dsaca.co.in](mailto:neelu@dsaca.co.in)
- ✓ CA Neha Patel (Manager - Taxation)  
[neha@dsaca.co.in](mailto:neha@dsaca.co.in)
- ✓ CA Ajay Sachani (Manager – Indirect Taxation)  
[ajay@dsaca.co.in](mailto:ajay@dsaca.co.in)
- ✓ Digvijay Hirwani (Assistant Manager - Taxation)  
[digvijay@dsaca.co.in](mailto:digvijay@dsaca.co.in)
- ✓ Alok Sharma (Deputy Manager – Indirect Taxation)  
[sharma.alok12@gmail.com](mailto:sharma.alok12@gmail.com)

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**Where assessee sold a residential property and purchased a house property and incurred certain expenditure to make it habitable, same could not be called renovation expenses and, thus, assessee should get exemption under section 54 on this expenditure also.**

During the year under consideration, the assessee had sold his residential property jointly with other co-owners and the assessee purchased a house property for a consideration of Rs. 60 lakhs and also incurred capital expenditure of Rs. 24.24 lakhs to bring the new house in habitable condition and claimed deduction for investment made in house property in accordance with Section 54 of the Income Tax Act (the “Act”).

The Assessing Officer denied the assessee's claim under Section 54 for said expenditure stating that the capital expenditure so made by the assessee to bring the new property in the habitable condition would not be includible in the cost of new property.

On appeal, the Commissioner (Appeals) also called the expenditure incurred to bring the house in-habitable condition as renovation expenses and upheld the order of the Assessing Officer.

Aggrieved by the order of the Commissioner (Appeals), the assessee filed an appeal before the Hon'ble Delhi Tribunal.

The tribunal observed that, the assessee has purchased house property at plot no. B-303, Sector-B in residential colony known as Greenfields situated at Faridabad, Haryana on 11-12-2012 at a sale consideration of Rs. 60 lakhs, paid stamp duty of Rs. 4.80 lakhs, commission of Rs. 65,000 in respect of purchase of property and Rs. 24.24 lakhs for capital expenditure to bring the new house in the habitable condition. The assessee has purchased the aforesaid flat in unfinished condition from the builder. The assessee has incurred the necessary capital expenditures which amount to Rs. 24.24 lakhs in the form of electrification of house and water facilities, wooden works, glass works, works to carry out cooking activities, bath room fittings and fixings and painting of wall, doors and windows, in support of which necessary evidences has been provided to the Assessing Officer to make the new property in the habitable condition since the flat so purchased was in unfinished/in a state of general disrepair and was inhabitable. The Assessing Officer has denied assessee's claim under section 54 without cogent reasons. The Commissioner (Appeals) also called the expenditure incurred to bring the house inhabitable condition as renovation expenses. As per the facts of the case, the house was purchased in inhabitable condition and expenditure was necessary for the proper electrification, water facilities, wood work, glass work, etc. as detailed above. It cannot be at all called renovation expenses. Assessee's claim is appropriate and assessee should get exemption under section 54 on this expenditure also. Accordingly, in view of the aforesaid discussion, the Delhi Tribunal set aside the orders of the authorities below and decided the issue is in favour of the assessee.

*[Om Prakash Thakur v. ITO [2024] 164 taxmann.com 704 (Delhi - Trib.)]*

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## **Assessee to be given opportunity to explain before switching additions from u/s 68 to 69A of the Income Tax Act.**

The assessee received a notice for the relevant assessment year proposing to add a certain amount to the total income as unexplained cash credits under section 68 of the Income Tax Act (“the Act”). The assessee responded to the notice explaining why the addition should not be made. Despite the response, the Faceless Assessment Unit (NFAC) issued an assessment order, adding the said amount as unexplained money under section 69A instead of section 68.

Contending that this switch from section 68 to section 69A without prior notice violated the principles of natural justice, the assessee filed a writ petition before the Calcutta High Court.

The High Court ruled that the two provisions are entirely separate. Under Section 68, if a sum is credited to an assessee's books for the previous year without an explanation regarding its nature and source, or if the explanation is unsatisfactory, the income tax authorities may treat that sum as the assessee's income for the previous year.

In contrast, Section 69A applies when the assessee is found to possess money, jewellery, or other valuable assets not recorded in their accounts. If there is no explanation for the nature and source of these assets, or if the explanation provided is unsatisfactory, the assets will be deemed as income for that financial year.

In this case, although the notice to show cause clearly identified that the amount proposed to be added back was by invoking the provisions of Section 68 and the assessee on such premise had responded to the same, the final assessment order was passed by treating the same to be an “unexplained money” under section 69A.

The language used in section 69A clearly required the assessee to be afforded an opportunity to explain. As such, even if the NFAC were of the opinion that in this case section 69A ought to be invoked, NFAC ought to have granted an opportunity to the assessee to explain at least prior to passing the assessment order. In the absence of any notice, the assessee was obviously taken by surprise and was denied the opportunity to appropriately explain.

Accordingly, the determination made by NFAC, as reflected in the assessment order, was vitiated. Since the above violates the principles of natural justice, the order impugned became unenforceable in law.

*[Vishal Jhajharia vs. Assessment Unit, Income-tax Department Faceless Assessment Centre - [2024] 164 taxmann.com 781 (Calcutta High Court)]*

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