DESAI SAKSENA & ASSOCIATES

22nd August, 2025

Friday Tax Alert

Section 69 addition unsustainable where NRI purchase flat which is Funded via Housing loan and Overseas Sources – Delhi ITAT.

Facts of the case:

- The Assessee was a Non-resident Indian. On the basis of AIR information that the Assessee had invested in purchase of property for a sum of Rs. 5.17 crores during the year and since no return of income was filed, the Assessing Officer reopened the case of the Assessee *vide* notice under section 148. The Assessing Officer noted that no return of income was filed by the Assessee in response to the said notice under section 148. The Assessing Officer further noted that in absence of any response filed by the Assessee to the notice under section 142(1) and the show cause notice, observed that, since no source of investment was submitted, he treated the investment of Rs. 5.17 crores as unexplained investment under section 69 in the draft assessment order under section 144C.

- The DRP gave its finding and direction to the Assessing Officer, which was to consider and verify the Assessee's contention in light of submissions made as above before the Panel by passing a speaking and reasoned order within the ambit of law and facts of the case.

- The Assessing Officer passed the final assessment order. In the final order, the Assessing Officer stated that as per the directions of the DRP, the case was re-examined again with information available on record but stated the claims of the Assessee was not found tenable and determined the total income of the Assessee at Rs. 5.17 crores under section 69 as was done by him in the draft assessment order.

- Aggrieved by the order the Assessee filed an appeal before the Hon'ble Income Tax Appellate Tribunal.

Decision held by Hon'ble Income Tax Appellate Tribunal:

- The Assessee submitted that the Assessee being Non-resident Indian residing outside India with his foreign address only on PAN, was not served personally with the notice under section 148. However, the Assessee submitted details before the Assessing Officer *vide* letter in response to show-cause notice issued in respect of proceedings under section 147 and thus the Assessee was aware during the pendency of the assessment proceedings that the same was in pursuance of proceedings under section 147.

- On perusal of the sale agreement in respect of the flat, it is seen that the said flat was purchased by the Assessee and his brother. Further, on perusal of the details of the payments submitted by the Assessee and the supporting documents filed by the Assessee, it is seen that **the payment for said flat has been made by the Assessee (Rs. 36,62,000/-), Shri Udit Pal Garg a British National i.e. investment advisor of the Assessee (Rs. 39,00,000/-), M/s Estate Cares (Rs. 20,00,000/-), Mrs. Bharti Dhimantrai Patel i.e. sister-in-law of the Assessee and wife of the Co-owner (Rs. 1,38,28,856/-) and through housing loan account (Rs. 2,68,77,732/-).** The said details of payments and the supporting documents filed by the Assessee have been perused and verified very carefully and the details of sources of investment explained therein have been found to be correct. It is also observed that sources and the dates of payment are matching with the respective receipts issued by the builder for the sale of the said flat. Further, the above payments are also matching with the details of

payments collected by the Assessing Officer under section 133(6) of the Act from the builder which is forming part of notice under section 142(1).

- On careful verification of the above details, it is seen that during financial year 2014-15 relevant to assessment year 2015-16 subject matter of this appellate year, the Assessee had paid a sum of Rs. 5,02,67,531/- (out of Rs. 5,17,67,531/- considered by the Assessing Officer was paid) to the builder.

- Thus, as per the above details, it is found that the source of funds of Rs. 2,33,90,256/- is from sources outside India and balance sum of Rs.2,68,77,732/- (Rs.5,02,67,988/- - Rs.2,33,90,256/-) has been paid out of housing loan. Moreover**, the Assessee has satisfied that he himself is a UK Citizen and a UK passport holder and his submission that he was a non- resident during the year has not been contradicted by the lower authorities**. Similarly, the Assessee has satisfied that **Shri Udit Pal Garg was a British National and filed his tax return for year 2014. Also, Mrs. Bharti Dhimantrai Patel (sister-in-law of the Assessee and wife of the co- owner) has satisfied that she was an UK Citizen and a UK passport holder**. Further, on perusal of the above payments except for an amount of Rs. 2,68,77,732/- (paid through housing loan) and Rs.20,00,000/- paid by M/s Estate Cares, the balance amount was paid from a source outside India or through the NRE Account of the Assessee. Regarding **the payment of Rs. 20,00,000/- paid by M/s Estate Cares, through HDFC Bank, prior to this transfer, an amount of Rs. 49,01,500/- was credited in the said bank account (through conversion of GBP 50,000/-) and a sum of Rs. 11,50,000/- was received from Shri Udit Pal Garg a British National. Thus, the payment of Rs. 20,00,000/- though paid in India but it was sourced from outside India**. **Therefore, the entire payment of Rs. 2,33,90,256/- other than the housing loan amount of Rs. 2,68,77,732/- being sourced from outside India will not be taxable in the hands of the Assessee, he being a non-resident during the financial year 2014-15 relevant assessment year 2015-16. Similarly, the payment of Rs. 2,68,77,732/- paid through housing loan will not be taxable as the source of the same stands explained.**

- Further, the submissions of the Assessee that the payment of Rs.5 lakhs, Rs.10 lakhs on 28-11-2013 and 10-2-2014 were paid in financial year 2013-14 and therefore cannot be a subject matter of addition in the case of the Assessee for assessment year 2015-16 is found to be acceptable. The fact that the above payment of Rs.15,00,000/- was not made in financial year 2014-15 was also confirmed by the builder. The same is mentioned in the notice under section 142(1) as the said amount is shown as opening balance as on 1-4-2014.

- Therefore, considering the facts in totality, the addition made by the Assessing Officer under section 69 is not sustainable and the same is deleted.

[Nilesh Purshottam Ghodasara v. Deputy Commissioner of Income-tax, Circle, International Taxation-1(3)(1) [2025] 176 taxmann.com 830 (Delhi - Trib.)]

No prosecution under Black Money Act, 2015 for non-disclosure of assets (except immovable property) up to 20 Lakhs – CBDT Instruction.

Central Board of Direct taxes ('Board') had issued an Instruction, vide F.No.285/46/2021/IT (Inv. V)/645 dated 15.03.2022, clarifying that prosecution under section 49 and/or 50 of BMA, 2015 shall not be initiated in cases where penalty under section 42 and/or 43 of the BMA, 2015 is not imposed or imposable, in relation to assets covered under the proviso to aforesaid sections i.e. an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to Rs.5 lakh at any time during the previous year. The instruction aimed to protect individuals holding foreign accounts with minor balances that might not have been reported due to oversight or ignorance, by providing that non-disclosure of such accounts will not attract penalty or prosecution.

The Finance (No.2) Act. 2024 has substituted the proviso to section 42 and 43 of the BMA, 2015 w.e.f 01.10.2024 and current proviso to section 42 and section 43 reads as under:

> ***"Provided that this section shall not apply in respect of an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed twenty lakh rupees".***

The amendment has expanded the scope of assets, which are not amenable to penalty provisions under section 42 and/or 43 of the BMA, 2015, while the existing Instruction continues to provides protection from prosecution proceedings only in respect of assets, which are covered by the unamended provisions.

The matter has been examined in Central Board of Direct Taxes ('Board') and in order to provide relief from institution of prosecution proceedings under section 49 and/or 50 of BMA, 2015, in respect of asset(s) covered under the proviso to penalty provisions under section 42 and 43 of BMA, 2015, it has been decided to amend the Instruction dated 15.03.2022.

In view of the above and in exercise of powers under section 84 of the BMA, 2015 read with section 119 of the Income Tax Act,1961, the Board hereby amends Instruction dated 15.03.2022 and directs that **prosecution proceedings under section 49 and/or 50 of BMA, 2015, would not be initiated in cases where penalty under section 42 and/or 43 of the BMA, 2015 is not imposed or imposable in relation to assets covered under the proviso to aforesaid sections i.e. an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed a value equivalent to Rs. 20 lakh at any time during the relevant previous year.**

This shall come into effect from the date when the amendment to section 42 and 43 of BMA, 2015 became effective through Finance (No.2) Act, 2024.

[vide CBDT Instruction No. F. No. 285/46/2021-IT(Inv.V)/88 dated 18.08.2025]

Desai Saksena & Associates

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