

INCOME TAX BULLETIN

APRIL 2024



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1. Restriction under section 13(1)(b) are applicable at the time of assessment of tax exemption and not at the time of registration:

Case of : Jamiatul Banaat Tankaria Vs CIT(Exemption)

Decision by : ITAT, Ahmedabad

In favour of : Assessee

Date of Judgement : 06th March 2024

- Assessee Trust namely, Jamiatul Banaat Tankaria applied for registration under Section 12AB of the Income Tax Act. The CIT(E) believed the trust's objects primarily benefited a specific religious community i.e. Muslims, and thus, denied registration under Section 12AB. CIT(E) considered the trust as a religious-cum-charitable trust with objects restricted to benefit Muslims.
- The assessee raised an appeal before the ITAT wherein the Tribunal clarified that Section 13(1)(b) is applicable only during the examination of exemption under Section 11 and not during the grant of registration under Section 12AB. ITAT criticized CIT(E) for misinterpreting the Supreme Court's decision in the case of Dawoodi Bohara Jamat and failing to consider the timing of Section 13(1)(b)'s applicability.
- Tribunal observed that CIT(E) focused only one object for the benefit of a particular religious community so as to invoke Section 13(1)(b) and ignored the rest of the objects that were charitable in nature.
- Tribunal held that exemption under Section 11 is denied by virtue of Section 13(1)(b) if the trust was created or established for the benefit of a particular religious community. When majority of the trust's objects are charitable in nature, with only one object specifically benefiting Muslims, it is not prudent to invoke Section 13(1)(b) at the registration stage.
- Tribunal further held that the objects of the trust are not wholly for the benefit of a particular religious community, but are largely charitable for general public at large, and for the purpose of granting registration under Section 12AB, the provision of Section 13(1)(b) could not be referred to, which was to be applied only when granting the exemption to the trust.





- Thus, ITAT set aside the CIT(E)'s order denying registration and directed CIT(E) to grant registration under Section 12AB to the Assessee.

Full Judgement: [Jamiatul Banaat Tankaria](#)

SNR's Take

The judgement clarifies that Section 13(1)(b), which restricts exemption for trusts benefiting a specific religious community, applies only when seeking tax exemption under Section 11, not during registration under Section 12A. Trust's objects can be charitable for the general public even if it has some activities for a specific community. This doesn't disqualify it from grant of registration under Section 12A.

2. Capital Gains exemption on sale of agricultural land not dependent on the usage of such land for agricultural purposes:

Case of : Ashok Chaganlal Thakkar vs NFAC

Decision by : High Court, Bombay

In favour of : Assessee

Date of Judgement : 13th February 2024

- Assessee sold some part of land and claimed capital gains exemption for land sale under Section 2(14)(iii) of the Income-tax Act, 1961 while arguing that the land was an agricultural land.
- Revenue rejected the contention of Assessee and held that land was a capital asset as there was no evidence submitted to prove that Assessee had carried out agricultural operations during the year under consideration.
- Assessee preferred an appeal before the CIT(A) and submitted documents from the Talati stating that the parcels of agricultural lands were located more than 8 K.M. away from the urban area and a letter from Gram Sevak in Gram panchayat certifying that the total population of the villages was 1216.
- CIT(A) accepted Assessee's contention that actual agricultural operations weren't necessary to classify particular parcel of land as agricultural. However, CIT(A) rejected Assessee's claim due to lack of evidence from government records.
- Assessee appealed to the ITAT, which noted evidence submitted during CIT(A) proceedings showing the land as agricultural in nature. ITAT remanded the case to the Assessing Officer for further investigation. After remand, a fresh assessment order was passed without giving Assessee a hearing opportunity, focusing again on the lack of evidence of agricultural operations. Assessee filed a writ petition against this assessment order.
- High Court noted CIT(A)'s acceptance that actual agricultural operations weren't necessary condition for deciding that a particular parcel of land was agricultural land. Court held that Sections 45(1) and 2(14)(iii) do not require that the land had to be used for agricultural purpose and that only Sections 10(37) and 54B provided for agricultural activity to be carried out.



- Court criticized the Assessing Officer (AO) for disregarding the findings of the CIT(A) and passing the order without conducting a proper examination of the evidence submitted by the Assessee. Court directed the AO to reconsider the evidence submitted by Assessee and conduct inquiries if needed.
- AO was instructed to focus on the authenticity of evidence and not reject Assessee's contention solely based on the lack of agricultural operations.
- The court emphasized that mere sale of land within two years of purchase doesn't automatically disqualify it as agricultural. Assessing Officer must consider all evidence before making a determination. Court mandated a hearing for Assessee before any decision is made by the Assessing Officer, ensuring fair process.



Full Judgement: [Ashok Chhaganlal Thakkar](#)

SNR's Take

The Bombay HC clarified that Sections 45(1) and 2(14)(iii) focus only on the land's nature (agricultural) and not on its current use. Further, only Sections 10(37) and 54B specifically require agricultural activity. This case emphasizes the importance of examining the land's classification in government records and other relevant documents submitted by the assessee (taxpayer) to determine its agricultural status.

3. Trust allowed to file ITR-7 so as to enable assessment on merits disregarding the fact that initially ITR was filed in ITR-5 by mistake:

Case of : Parth Pragati Mandal Vs ITO (Exemption)

Decision by : ITAT, Ahmedabad

In favour of : Assessee

Date of Judgement : 23rd February 2024

- Assessee, a trust, registered under Section 12A and Section 80G(5) and engaged in the activity of providing education to the poor and needy people of the villages of different parts of Gujarat, filed its return of income declaring total loss at Rs.3.80 Lacs
- Assessee claimed deduction of Rs.63.55 Lacs out of which 15% of the total income, i.e. Rs. 8.96 Lacs was disallowed by the Revenue on the ground that the return was filed in ITR 5 instead of ITR 7, thus considered Assessee as an AOP and disallowed accumulated amount set apart to the tune of 15% of total income.
- Revenue further applied interest under Section 234B, 234C & 234D. The assessee filed an appeal before the CIT(A). However, the same was dismissed as it was barred by limitation for 313 days. The Ld. CIT(A) held that Assessee failed to show sufficient cause which could justify the delay. Aggrieved, Assessee preferred the appeal before the Tribunal.
- ITAT observed that a trust is required to file return of income in ITR-7 and can claim an amount of 15% of total income as exemption under Section 11(1)(a). However, the Assessee filed ITR in Form ITR-5, which was not as per the provisions of the Act, in order to claim benefit of exemption under Section 11 & 12.
- Tribunal considered Assessee's reply filed before the Revenue and found that the Assessee conceded that by mistake it had filed ITR-5 instead of ITR-7, however the same was not considered by the Revenue and order was passed treating Assessee as an AOP upon making disallowance of the amount accumulated to the tune of 15% of total income.





- The tribunal observed that the error on the part of the assessee was genuine, thus, granted the assessee a chance to correct the error considering Assessee's social impact activities. To enable the assessee to file the return in Form ITR-7, the tribunal granted liberty to the appellant to apply before the concerned authority under Section 119(2)(b) for approval to file ITR-7 within 15 days from the date of passing of this order
- Tribunal Directed the Revenue to keep the assessment proceeding in abeyance till the finalization of Assessee's application before the CBDT, for a maximum period of 8 months and then to finalize the issue ultimately, strictly in accordance with law upon giving an opportunity of being heard to the Assessee and upon considering the evidence on record and any other evidence which the Assessee may choose to file at the time of hearing of the matter. Tribunal Further directed the Revenue to pass a reasoned order in accordance with the aforementioned directions.

Full Judgement: [Parth Pragati Mandal](#)

SNR's Take

Trusts must file their income tax returns using ITR-7 and not in ITR-5. Filing the wrong form can lead to disallowance of deductions and levy of interest & penalties, as seen in this case where the trust's deduction for accumulation of income was disallowed. The Tribunal acknowledged the trust's mistake as genuine, considering their social work. This case emphasizes the importance of choosing the correct ITR form and the possibility of some leniency for verifiable mistakes, especially for organizations with a social impact.

4. Notional Interest is not taxable as it does not lead to accrual of any real income:

Case of : ACIT Vs Kesar Terminals and Infrastructure Ltd

Decision by : ITAT, Mumbai

In favour of : Assessee

Date of Judgement : 08th March 2024

- During the AY 2018-19, the assessee, a public limited company, provided an interest-free loan to its wholly owned subsidiary but recorded 'notional interest' in its books of accounts as per Indian Accounting Standards (Ind AS).
- The company excluded this notional interest from its total income for income tax purposes.
- However, the tax authority included this notional interest in the total income during assessment. The company filed for rectification, arguing that the notional interest should not be taxed as it didn't accrue to the company without a contractual obligation.
- The CIT(A) ruled in favor of the company, stating that since there was no contractual obligation, the interest income did not accrue to the company and thus, was not liable for taxation.
- The revenue went in appeal before the Mumbai Tribunal (ITAT) that upheld this decision, citing a similar ruling by the Chennai ITAT in the Shriram Properties case.
- The Mumbai ITAT emphasized that notional interest credited to the profit and loss account as per Ind AS should not be considered as real income without a contractual obligation for repayment.
- The ITAT noted that the tax authorities failed to demonstrate the existence of a contractual obligation to collect interest from the debtors. Therefore, it concluded that income tax could only be levied on real income, not on notional income, and the notional interest credited to the profit and loss account according to Ind AS could not be considered real income without a contractual obligation.





Full Judgement: [Kesar Terminals and Infrastructure Ltd](#)

SNR's Take

In this case, the Tribunal emphasized that income tax applies only to real income and not on theoretical or potential income. In this case, since no actual interest income was received, it's not considered taxable.

5. Despite drastic spike in prices, LTCG cannot be treated as bogus in the absence of cogent material:

Case of : Sarika Bindal Vs ITO

Decision by : ITAT, Delhi

In favour of : Assessee

Date of Judgement : 13th December 2023

- During AY 2015-16, Assessee declared LTCG of Rs. 51.41 Lac arising on sale of shares of CCL International Ltd. (company) and claimed it as exempt under Section 10(38).
- During the course of assessment, Revenue issued show cause notice alleging that LTCG claimed as exempt income is only an accommodation entry to which Assessee responded and stated that 10,000 shares were purchased from M/s Sai Securities (broker) at a purchase cost of Rs. 4 Lac which were subsequently transferred to demat account and sold in the year 2015 against which it received consideration of Rs. 51.06 Lac through banking channels.
- Revenue rejected Assessee's contention and relied on investigation report issued by Directorate of Investigation, Kolkata to hold that modus operandi of the Assessee involves rigging the prices of penny stocks through involvement of multiple intermediaries and consequently taking advantage of tax by claiming exemption under Section 10(38). The revenue, thus, invoked Section 69A and treated LTCG of Rs. 51.41 Lac arising from sale of CCL shares to be unaccounted income and Rs. 1.02 Lac as unaccounted expenditure under Section 69C.
- The assessee went in appeal before the CIT(A) who allowed the appeal of the assessee giving due weightage to the arguments.
- Before ITAT, Assessee contended that Revenue erroneously relied upon the investigation report without primarily narrating general modus operandi since the LTCG claim is fully supportable by documentary evidence. He further contended that the company is a genuine listed company which has adequate profit, fixed assets as well as turnover and it has neither been delisted nor suspended for trading on stock exchange till date.
- Revenue contended that claim of LTCG on sale of shares of penny companies can be denied relying on Calcutta HC judgment in the case of Swati Bajaj.





- ITAT noted that the existence of purchase and sale of company shares giving rise to LTCG and claimed to be exempted under Section 10(38) is fully corroborated by the documentary evidence. The tribunal noted that shares were credited in the demat account and transferred out of the demat account at the time of sale, accordingly, the sale and purchase of shares were through banking channels and by transfer of shares.
- The Tribunal relied on jurisdictional HC judgments in the case of Karuna Garg as well as Krishna Devi wherein it was held that astronomical increase in the share price of a company in itself is not a justifiable ground to deny the claim of LTCG holding it to be accommodation entry. The tribunal further noted assessee's contention that in case of another Assessee, reassessment order was passed without making any addition on account of LTCG derived from sale of company shares and thus, remarked that 'on the substratum of the company financials, the Assessee has also demonstrated that CCL Ltd. is engaged in substantial business with significant turnover and fixed assets base'.
- The ITAT thus, opined that addition is not justified based on conjecture and surmise and the Assessee has discharged primary onus which lay upon it, however, Revenue on the other hand, could not dislodge the perception that apparent is not real.
- The Tribunal held that the Revenue has not provided anything on record to justify additions under Section 69C either, accordingly, the modus operandi spelt by itself is not an adequate ground to impeach the transactions.

Full Judgement: [Sarika Bindal](#)

SNR's Take

This decision by the tribunal emphasizes that documentary evidence, the demonstrable legitimacy of the company involved, and a clear understanding of the burden of proof are critical factors in determining the validity of LTCG claims, especially for penny stocks. By adhering to these principles, both taxpayers and tax authorities can navigate the complexities of LTCG exemptions more effectively.

Circulars/ Notifications:

1. CBDT extends time-frame for processing 'non-scrutiny ITRs' for AY 2021-22 till April 2024:

CBDT relaxed the time-frame prescribed for processing for returns under Section 143(1) for AY 2021-22. It provides that intimation of processing ITRs can be sent to the assessee by Apr 30, 2024.

Read Orders: [Order u/s 119](#)

2. CBDT apprised of 'mismatch communication' exercise for AY 2021-22 under e-Verification Scheme:

CBDT issues Press Release to apprise that under e-Verification Scheme, 2021, the Income Tax Department is in the process of sending communication to the taxpayers for the mismatch in information pertaining to AY 2021-22. As per the Press Release, the Department is sending this information to the taxpayers on their registered e-mail ids, urging them to view their AIS through the e-filing portal and file ITR-U wherever found necessary by the taxpayer.

Read Press Release: [04.02.2024 Press Release](#)

3. CBDT notifies amendments in tax audit report & tonnage tax application:

The CBDT has notified the amendments to Forms 3CD, 3CEB and 65. These changes are made to align and update these Forms, amongst others, with the amendments to section 115BAE and section 92BA of the Income Tax Act, 1961 (ITA), vide Finance Act 2023.

Read Notification: [27/2024](#)

4. CBDT clarifies on trusts' exemption eligibility on inter-trust donations :

CBDT clarified that eligible donations made by a trust / institution to another trust / institution under any of the two regimes (Sec.10(23C) or Sec.12AA/12AB) shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. It further clarified that 15% of such donations by the donor trust / institution shall not be required to be invested in specified modes under section 11(5) as the entire amount has been donated to the other trust / institution and is accordingly eligible for exemption under the first or second regime.

Read Circular: [3/2024](#)

5. CBDT issues Corrigendum to Tax Audit Report amendment regarding Sec.43B(h) :

The CBDT notified changes to the Form 3CD vide Notification No. 27/2024 /F. No. 370142/3/2024-TPL, dated 05-03-2024. The changes duly include disclosure of section 43B(h) disallowance under clause 26. However, Clause 22, pertaining to interest restrictions under the MSME Development Act, was not amended.

The clause is now amended to include disclosure of the amount disallowed under section 43B(h) along with the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Read Circular: [34/2024](#)



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