



TAX UPDATE

KANU DOSHI GROUP

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Non-Applicability of Black Money Act if Investment in Foreign Entity is Disclosed in Audited Balance Sheet

The below mentioned ruling was determined in the case of Ocean Diving Centre Ltd.(assessee) V. Commissioner of Income Tax (Appeals).

Facts of the case

In Assessment year 2016-17, the assessee company declared its total income as 'NIL'. During the course of investigation it was found that assessee had investment in foreign entities but had not disclosed the said investment in schedule of 'foreign assets' in its return of income and therefore a notice under section 43 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued to assessee.

It is not in controversy that the assessee had not disclosed the information *qua* investment in foreign entity in Schedule FA of the income-tax return but disclosed the same in its balance-sheet and Schedule Part A-BS under 'non-current investments' attached with the return of income filed for the assessment year under consideration.

The Assessing Office being not impressed by the claim of the assessee, rejected the same and ultimately levied the penalty under section 43 on Black Money Act.

By reading bare provisions of section 43 of B.M. Act, it clearly reflects that a person shall pay by way of penalty a sum of Rs. 10 lakhs who fails to furnish any such information or furnishes inaccurate particulars *qua* any asset/located outside India/sourced from outside India in the return of income filed under sub-section (1) or (5) of section 139.

In the present case, the assessee admittedly duly recorded and disclosed the investment in foreign entity in its audited balance-sheet and also furnished such information under 'non-current investments' in Schedule Part A-BS in its return of income, and, hence, the claim of the assessee that the assessee has directly or indirectly complied with the statutory provisions is to be accepted and therefore, the case of the assessee does not fall under the rigorous provisions of section 43 of the Black Money Act.

Conclusion

In the instant case, it is not the case of total defiance or *mala fide* or dishonest breach/non-disclosure of information of foreign investment in Schedule 'FA', therefore, on the aforesaid consideration, no penalty is warranted, hence, the same is deleted. Consequently, the appeal filed by the assessee is allowed.

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