

## Chandigarh, Wednesday, December 11, 2003

***The amount embezzled by the power of attorney holder is a loss but cannot be claimed against the capital gains of the assessee***

*Query:* I am an NRI and had a commercial property in Chandigarh, which I wanted to sell. I gave power of attorney to my relative who sold the property for Rs 63 lakh, He paid me only Rs 55 lakh and it seems that I would not be able to recover the balance amount from him. Can I claim this embezzled amount as deduction in computing Capital Gain?

*Reply:* The amount embezzled by the power of attorney holder is a loss but cannot be claimed against the capital gains of the assessee. The loss incurred by the assessee is in the capacity of a owner and the loss cannot be taken as an expenditure occurring in the course of sale transaction.

Whereas if the transferor pays to the tenants for vacating the premises, it being the subject matter of sale, then the amount paid to tenants will have nexus 1 to the transaction and it i will be eligible for deduction from the sale consideration. (Naozar Chenoy v. CIT (1999) 7 DTC 240 (AP-HC) ; (1998) 234 ITR 95(AP)

In view of above, you cannot claim the embezzled amount as deduction in computing Capital Gain.

*Query:* Ours is a partnership firm and has been in business for the last decade. We have four partners, On 23<sup>rd</sup> Jan, 2001, one of the partners died and there was no condition in the partnership deed as to whether the death of the partner will dissolve the firm. The assessing officer for the year ended 31.3,2001 made two assessments saying that the erstwhile firm was dissolved on 23<sup>rd</sup> Jan, 2001 and the new firm came into existence from 24<sup>th</sup> Jan,2001. Will not the surviving partners who have continued business have implicitly reconstituted the firm and hence the question of dissolution of the old firm and the issue of two assessments would not arise. Can the dissolution of the firm be avoided upon death of a partner?

*Reply:* Section 42 of the Partnership Act,1932 says that the death of the partner would dissolve the firm.

However, if a condition had existed in the deed that the death of the partner shall not dissolve the firm then the demise of the partner will be taken as change in constitution only - resulting in single assessment for two periods comprised in the previous year,

A partnership deed should clearly specify the terms and conditions of the partnership and also areas where the provisions of the Partnership Act cannot have automatic application. If a condition is made in the partnership deed then the provisions of the Partnership Act cannot override those conditions.

This is because a partnership agreement is more a document evidencing the terms of relationship between the partners who enter into such agreement or arrangement.

There-fore your contention that the surviving' partners who have continued business have implicitly reconstituted the firm and that the question of dissolution of the old firm and the issue of two assessments would not arise is not tenable.

Also, the impact of the dissolution would be on inventory valuation on the date of demise and valuation of capital assets because of the application of section 45(4).

Regarding your second question, you can avoid the dissolution of the firm upon the death of a partner if you make a specific clause in the deed that the death of the partner shall not dissolve the firm.

*Query:* I have incurred Rs 55000 as medical expenditure on treatment of cancer of my father who was 68 years of age. I have also re incurred Rs 25,000 on the treatment of my son who had fracture to his left leg. Can I claim both these expenditures incurred as deduction from my taxable dc income. ?

*Reply:* *Where* an assessee 'actually' incurs an expenditure for the disease or ailment suffered by a dependent relative, he is eligible for a maximum deduction of Rs 40,000 only.

Where the assessee incurs expenditure for senior citizen then the deduction will be up to a maximum of Rs 60,000 (U/s 80DDB). Rule 11DD specifies the diseases for which expenditures incurred by the assessee are deductible. It in, includes cancer. Hence the expenditure incurred in respect of your father's treatment is eligible for a claim under section 80DDB.

However, expenditure incurred in respect of the fracture of left leg of your son is not eligible for deduction under section 80DDB. Please remember to obtain a certificate from a doctor in Form 10- I and the doctor should be post-graduate doctor registered with Indian Medical Association.

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