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Tax Digest

- Recent case laws

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Direct Tax Updates

- ***CBDT notifies online tax dispute resolution scheme:E-DISPUTE RESOLUTION SCHEME, 2022***

  [NOTIFICATION S.O. 1642(E) {NO. 27/2022/F. NO.370142/5/2022-TPL-PART1(PART1)},DATED 5-4-2022]

  The dispute resolution under this Scheme shall be made by the Dispute Resolution Committee on applications made for dispute resolution under Chapter XIX-AA of the Act in respect of dispute arising from any variation in the specified order by such persons or class of persons, as may be specified by the Board.

1. Section-270A "Immunity from imposition of Penalty" :

Where the penalty notice failed to specify the limb - "underreporting" or "misreporting" of income, the ingredients of section 270A were not satisfied; Denying benefit of immunity was thus erroneous and arbitrary

In the instant case[1], the assessee had filed a petition challenging an order which was rejected under section 270AA(4) of the Income Tax Act, 1961 seeking immunity from imposition of penalty under section 270A of the Act for the A.Y. 2018-19. The Petitioner's application was rejected on the ground that the case of the Petitioner did not fall within the scope and ambit of Section 270AA of the Act.

The assessee submitted before the Hon'ble High Court that the impugned order was barred by limitation in terms of Section 270 AA (4) of the Act, having been passed well beyond the period of one month from the end of the month in which the Petitioner had filed the application seeking immunity. It was submitted that in the instant case, all the facts, information, documents and figures submitted by the assessee had been accepted by the Respondents and the subject matter of dispute was a pure question of law, being interpretation of the contracts and the provisions of the Act & DTAA, for which there cannot be any allegation of "misreporting" of income on the part of the assessee.

In response to the assessee's contention, the Revenue contended that the assessee was not entitled to the benefit of immunity under Section 270AA of the Act.

After hearing both the sides, the Court opined that the Revenue's action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income was not only erroneous but also arbitrary and devoid of any reason as the Revenue failed to specify the limb - "underreporting" or "misreporting" of income in the penalty notice, under which the penalty proceedings had been initiated. The Revenue was not able to express as to which limb of Section 270A of the Act was attracted in this case and how the ingredient of sub-section (9) of Section 270A was satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Revenue in the assessment order to deny immunity from imposition of penalty and prosecution made the impugned order manifestly arbitrary.

After evaluating submissions made by both the parties, the Court held that the impugned action of Revenue was contrary to the legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

Consequently, the impugned order passed by Revenue under Section 270AA (4) of the Act was set aside and it was directed to grant immunity under Section 270AA of the Act to the assessee.

[1] **Schneider Electric South East Asia (HQ) PTE Ltd V. Assistant Commissioner of Income Tax (High Court, New Delhi) [2022]**

2. Section-151

Reassessment-After the expiry of four years-Limitation: Sanction by Additional Commissioner instead of Principal Commissioner- Taxation and other laws (Relaxation of certain Provisions) Act, 2020 only extended period of limitation and not for approval by the competent Authority-Sanction by Additional Commissioner was held to be bad in law-Reassessment notice was quashed

In the instant case[2], the asessee is in the business of investment and financing activities. For the Assessment year 2015-16 the assessment was completed under section 143(3) of the Act on 12-12-2017. The notice u/s 148 of the Act dt. 31-3- 2021 was received by the assessee. The various objections of the assessee was rejected and order disposing the objection was passed on 24-1-2022.

The assessee challenged the order disposing the objections on various grounds by filing the writ before the High Court.

One of the grounds was the re-assessment was initiated after expiry of four years from the relevant assessment year after obtaining the approval from the Additional Commissioner instead of Principal Commissioner. The Revenue contended that In view of the Taxation and other Laws (Relaxation of certain Provisions Act, 2020 (Relaxation Act) limitation, *inter alia* under provisions of section 151 (1) and section 151 (2) which were originally expiring on 31st March 2020 stand extended too 31st March, 2021. According to the Income Tax Officer, the assessment year 2015-16 which falls under the category "within four years" as on 31st March 2020, the statutory approval for issuance of notice under section 148 of the Act for the Assessment year 2015 -16 may be given the Range Head as per the said provisions. Allowing the petition the Court held that since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income tax.

Accordingly the notice issued under section 148 of the Act with the approval of Additional Commissioner was quashed

3. Section 148 : Reopening on the basis of mere "change In opinion" was not justified

Where issue of loan being given to group companies was a subject matter of consideration by Assessing Officer during original assessment proceedings and assessee had provided party wise details along with address of parties to whom loans/advances were given and interest received on such loans and nature of loans/advances had been considered in assessment order, reopening of assessment by Assessing Officer on ground that interest should be charged at 12 per cent per annum on loan given to sister concern and therefore this interest income had escaped assessment, being a mere change of opinion, on very same material was not justified.

[2] **J.M. Financial and Investment Consultancy Services Pvt Ltd Vs Additional CIT (Bombay High Court) [2022]**

In the instant case[3], the assessee had taken interest bearing loan from various institutions in market and had advanced part of loan so taken to group companies either at low interest rate or at NIL interest rate. The AO found the same during the course of assessment proceedings during which the assessee was called upon to provide party wise details along with address of the parties to whom loan and advances were given and details of interest received on such loans and also furnish the nature of the loans/advances. The assessee, in response provided party wise details along with address of the parties to whom loans and advances were given.

Subsequently, a notice u/s 148 was issued to initiate reassessment. Aggrieved, the assessee challenged the said notice issued by the Ld. ACIT seeking to re-open the assessment for A.Y. 2017-18 stating that the reasons recorded were already a subject matter of assessment, and the respective order rejecting assessee's objections before the Hon'ble High Court.

The Revenue contended that interest should have been charged at the rate of 12% p.a. on loan given to sister concern and therefore income chargeable to tax had been under assessed by the said amount. According to the AO, this interest income had escaped assessment.

The assessee argued to the above contention by stating the fact that it had in fact not received any interest in respect of the loans/advances given to its group companies in the assessment order 2017-18 and since, no income was received there was no question of paying any tax on income.

After hearing both the sides, the Court was of the view that income which accrues to a person is taxable in his hands but there is no such provision in law which says that income which he could have earned but has not actually earned is taxable as income accrued to him.

In the present case, the issue of loan given to group companies either at low interest rate or no interest rate was a subject matter of consideration by the Assessing Officer during the original assessment proceedings. Therefore, reopening of assessment was merely on the basis of change of opinion of AO from that held during the course of assessment proceedings.

Therefore, the Hon'ble court held that the said change of opinion did not constitute justification or reason to believe that income chargeable to tax had escaped assessment. Thus, assessee's appeal was allowed and impugned notice issued under section 148 of the Act and the order rejecting petitioner's objections were quashed and set aside.

4. Section 37(1), read with section 148 "Allowability of Business Expenditure":

Where reassessment notice was issued merely on basis of audit objection that assessee has debited certain amount of security deposit against interest income and the security deposit in question, being capital in nature would not be allowed under section 37(1), since assessee provided explanation that amount represented interest expenditure incurred for security deposit, said reassessment was held to be based on mere change of opinion and was to be quashed.

[3] **Parinee Realty Pvt Ltd. Vs Assistant Commissioner of Income tax (Bombay High Court) [2022]**

In the instant case[4], AO had issued reassessment notice after expiry of four years on ground that assessee had debited certain amount of security deposit against interest income and since, the security deposit under consideration being capital in nature would not be allowed under Section 37(1). The said objection was raised by audit department for which assessee provided explanation that the amount represented interest expenditure incurred for security deposit and was considered as security deposit in audit findings. The explanation provided by assessee was rejected by the AO as he had reason to believe that assessee's income chargeable to tax for A.Y. 2012-2013 had escaped assessment within the meaning of Section 147 of the Act.

Aggrieved, the assessee filed objections against the notice issued under section 148 of the Income Tax Act, 1961 (the Act) by the Revenue and the impugned order passed by AO rejecting its objections to the reopening of assessment for A.Y.-2012-2013.

After hearing both the parties, the Court was of the view that it was a case where the notice under section 148 of the Act had been issued after the expiry of 4 years from the end of the relevant A.Y. and assessment under section 143(3) of the Act had also been completed. Hence, Section-147 of the Act shall apply in this case. Moreover, the Revenue was asked to show that there was failure on the part of assessee to truly and fully disclose material facts relevant for the assessment.

After considering the reasons recorded for reopening the assessment, the Court concluded that the Revenue failed to show that assessee had failed to disclose truly and fully all material facts.

In the present case, the entire basis for reopening was change of opinion and as held in various judgements, an Assessing Officer cannot reopen an assessment even within a period of 4 years merely on the basis of a change of opinion. Since, there was no failure on part of assessee to truly and fully disclose facts, it could not be said that Assessing Officer had reasons to believe that income had escaped assessment in assessee's case. Thus, in the end, assessee's appeal was allowed and both the impugned notice under section 148 of the Act and the impugned order reissued were quashed and set aside.

[4] **Glaxosmithkline Pharmaceuticals Ltd. Vs Deputy Commissioner of Income-tax (Bombay High Court) [2022]**