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Tax Digest

- **Recent case laws**

April 17, 2023

The CBDT has been releasing key statistics relating to Direct Tax collections and administration in the public domain from time to time. In continuation of its efforts to place more and more information in the public domain, the CBDT has further released Time-Series data as updated up to F.Y. 2021- 22.

Direct Tax Updates

1. Section 153C:

Searches conducted before 01-06-2015 would be covered under amendment by FA 2015 in Section 153C

In the instant case[1], a search was conducted in 2013 on the premises of a business group. During the search proceedings, no original document was received by the AO belonging to the assessee. Only a hard disk containing references to the assessee's name was seized.

Assessee-individual filed its return of income for the relevant assessment year by declaring business income from a partnership firm and other incomes. After the search proceedings, the AO initiated the proceedings under Section 153C against the assessee based on seized material. A Panchnama was prepared before 01-06-2015. However, notice was issued under Section 153C after 01-06-2015.

Section 153C pertains to the assessment of the income of any other person. Under the unamended Section 153C, the proceeding against other persons (other than the searched person) was based on the seizure of books of account or documents seized or requisitioned "belongs or belong to" a person other than the searched person. The Finance Act 2015, w.e.f., 01-06-2015, amended Section 153C by replacing the words "belongs or belong to" with the words "pertains or pertain to".

On receiving notice, the assessee claimed that there were only references to the assessee's name, and thus the AO could not have initiated proceedings under the amended provisions of Section 153C. The matter reached the Apex Court.

The Supreme Court held that the Delhi High Court, in the case of Pepsico India Holdings Private Limited *[2014] 50 taxmann.com 299 (Delhi)* interpreted the expression "belong to". The High Court observed and held that there is a difference and distinction between "belong to" and "pertain to". The HC gave a very narrow and restrictive meaning to the expression/word "belongs to" and held that the ingredients of Section 153C have not been satisfied.

The observation made by the Delhi High Court led to a situation where, though incriminating material pertaining to a third party/person was found during search proceedings under section 132, the Revenue could not proceed against such a third party.

This necessitated the legislature to clarify by substituting the words "belongs or belong to" for the words "pertains or pertain to" and to remedy the mischief that was noted pursuant to the judgment of the Delhi High Court.

If the assessee's submission is accepted, i.e., although the incriminating materials were found from the premises of the searched person, they may still not be subjected to the proceedings under Section 153C solely on the ground that the search was conducted before the amendment. In this case, the very object and purpose of the amendment to Section 153C, which is to substitute the words "belongs or belong to" for the words "pertains or pertain to" shall be frustrated.

Any interpretation which may frustrate the very object and purpose of the Act/Statute shall be avoided by the Court. If the interpretation as canvassed by the assessee was accepted, in that case, even the object and purpose of the section shall be frustrated.

[1] **Income Tax Officer vs. Vikram Sujitkumar Bhatia (Supreme Court of India) [2023]**

Section 153C is a machinery provision that has been inserted to assess persons other than the searched person under Section 132. As per the settled position of law, the Courts, while interpreting machinery provisions of a taxing statute, must give effect to its manifest purpose by construing it in such a manner as to effectuate the object and purpose of the statute.

Therefore, the amendment brought to Section 153C *vide* Finance Act 2015 shall apply to searches conducted under Section 132 before 01-06-2015, i.e., the date of the amendment.

2. Section 142A ; 69C:

Reference to DVO under Section 142A can't be made for ascertaining expenditure which assessee made on purchases of land

In the instant case[2], the assessee filed return declaring nil income. The case was selected for scrutiny, and a notice was issued under Section 143(2). The Assessing Officer (AO) noticed that he purchased two tracts of land. Thus he referred matter to the valuation officer (DVO).

DVO estimated the value of the land is less than 10% of the value adopted by the Stamp Valuation Authority. AO proceeded to treat the difference as unexplained expenditure under Section 69C.

On appeal, the CIT(A) upheld the action of AO. Aggrieved-assessee filed the instant appeal before the Delhi Tribunal.

The Delhi Tribunal held that there is no dispute that AO in the assessment order had stated an addition regarding unexplained expenditure under Section 69C. AO had not brought on record that the mentioning of Section 69C was on account of any typographical error.

It was also clear from the assessment order that the AO had referred to the issue of the market value of the property in question under Section 142A. However, as per Section 142A, such reference can be made to ascertain the value of any investment referred to in Section 69 or Section 69B or the value of any bullion, jewellery or any other valuable article referred to in Section 69A or Section 69B. There was the conspicuous exclusion of Section 69C.

In the present case, a reference under Section 142A was not made regarding ascertaining the correct market value of the investment in property. But, it was to ascertain the expenditure that the assessee made on the purchases. Thus, the reference to DVO under Section 142A for Section 69C is invalid.

3. Section 32:

Sum paid to party allowable as bad debts only if it was lent in the ordinary course of money lending business

In the instant case[3], the assessee carries on real estate development business, trading in transferable development rights (TDR) and finance. During scrutiny assessment, the Assessing Officer (AO) disallowed a sum of Rs. 10 crores claimed as a bad debt. The CIT(A) confirmed the disallowance. However, the Tribunal allowed the assessee's plea.

On subsequent appeal, the Bombay High Court ruled that no question of law requiring a decision arose in the appeal and consequently declined to entertain AO's plea. AO approached the Supreme Court of India.

[2] **Toffee Agricultural Farms (P.) Ltd. vs Income-tax Officer (ITAT Delhi) [2022]**

[3] **Principal Commissioner of Income-tax Vs. Khyati Realtors (P.) Ltd (Supreme Court of India) [2022]**

The Supreme Court held that for computing income chargeable to tax, besides specific deductions, 'other deductions' enumerated in different clauses of Section 36 can be allowed by the AO.

Each of the deductions must relate to the business carried out by the assessee. If the assessee carries on a business and writes off a debt relating to the business as irrecoverable, it would, without doubt, be entitled to a corresponding deduction under Section 36(1)(vii) subject to the fulfilment of the conditions set forth in Section 36(2).

Further, merely stating a bad and doubtful debt as irrecoverable without the appropriate treatment in the accounts, as well as non-compliance with the conditions in Section 36(1)(vii), 36(2), and Explanation to Section 36(1)(vii) would not entitle the assessee to claim a deduction.

In the present case, the record shows that the accounts of the assessee nowhere showed that the advance was made by it in the ordinary course of business.

In support of its argument that the amount was given as a loan, the assessee nowhere established the duration of the advance, the terms and conditions applicable to it, interest payable, etc. Though the assessee conceded that it had received interest income, it could not establish that any interest was paid (or shown to be payable in its accounts).

Further, there was nothing on record to suggest that the requirement of the law that the bad debt was written off as irrecoverable in the assessee's accounts for the previous year had been satisfied.

Thus, the assessee's claim for deduction of Rs. 10 crores as a bad and doubtful debt could not be allowed. The findings of the ITAT and the High Court were insubstantial and to be set aside.

4. Section 195:

Sale of property reported by Mahesh Bhupathi in ITR does not absolve the buyer's liability to deduct tax under Section 195

In the instant case[4], the assessee was engaged in the business of real estate. It had sold one apartment in a residential complex to Mr. Mahesh Bhupathi. Later, Mahesh Bhupathi offered to sell the same apartment back to the assessee. The assessee made payment to Mahesh Bhupathi without deducting tax at source (TDS).

The Assessing Officer (AO) held that Mahesh Bhupathi was a non-resident. Thus, the assessee was liable to deduct tax on the capital gains arising from the payment made to him. The AO held the assessee to be in default and levied tax and interest liability.

The assessee contended that it was not aware of the fact that Mahesh Bhupathi was a non-resident. Further, Mahesh Bhupathi had duly reported the transaction relating to the sale of the apartment in his return of income. Thus, the assessee cannot be considered an assessee in default.

The Tribunal held that the assessee's claim that it was unaware of the residential status of Mahesh Bhupathi could not be accepted as he was associated with the assessee for a long time. Facts on record show that the assessee was well aware of the residential status of Mahesh Bhupathi, and thus it was liable to deduct tax as per the provisions of Section 195.

Section 195 casts obligations upon the payer to deduct tax at source on the sum paid to the non-

[4] **Nitesh Estates Ltd. v. ADIT (Internation. Taxation) (ITAT Bangalore) [2022]**

resident payee. The legislature incorporated provisions like Section 195 to prevent NRIs from taking away the entire money abroad without paying the due tax. The Indian tax authorities will have no control once this money is thrashed away.

Further, as per Section 195, it is not relevant whether NR-payee has reported income in ITR or does not have positive income under consideration. If the payment in question is chargeable to tax, then the person making the payment is obliged to deduct tax at source.