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Tax Digest

- Recent case laws

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Direct Tax Updates

NEWS FEED

- ***CBDT made return filing mandatory where turnover, TDS/TCS or deposit in saving bank account exceeds certain limit.***

The CBDT has notified additional conditions under the seventh proviso to section 139(1) whereby return filing is made mandatory in case:

i) ***turnover from business or gross receipt from profession exceeds Rs. 60 lakh or Rs. 10 lakh,*** *respectively.*

ii) amount of ***tax deducted and collected in case of a person exceeds Rs. 25,000 or deposit in saving bank account(s) is Rs. 50 lakh or more****.*

1. Section-68 "Unexplained Cash Credit":

It was justified to make addition to assessee's income under Section 68 where assessee failed to establish creditworthiness or genuineness of the transaction

In the instant case[1], assessee had received share application money during the A.Y. 2013-14. During the course of assessment, assessee claimed that said sum was invested by its director by taking advance from another company (X). However, Assessing Officer (AO) was of the view that the said amount advanced was not consistent with the return of income of company X on the basis of documents as submitted by the assessee itself. Further, it was seen from bank statements that entries were only circulating in nature. Thus, AO made additions under Section-68 on ground that income had escaped assessment.

Aggrieved by AO's order, assessee preferred an appeal before the Ld. CIT(A) which confirmed the additions made by AO and dismissed the appeal filed by assessee.

Aggrieved the assessee went for an appeal before the Tribunal which after going through the records available inferred that in spite of repeated demands and several opportunities, the assessee had failed to produce any documentary evidence in support of genuineness and creditworthiness of the transaction in question. Furthermore, it was noticed that the amount advanced was not commensurate and consistent with the returned income of company X. The said company did not even have an office and possessed tangible assets of nominal value whereas the company had huge investments and loans and advances. Also, expenditure on staff and salaries was minimal and it was evident from the bank statements that the entries were only circulating in nature and the company had no investors/traders/debtors.

Considering the facts and circumstances of the case, the Hon'ble Tribunal was of the view that all the characteristics of Company X were consistent with those of shell companies operating without or with minimal assets/employees which merely provide accommodation entries and, therefore, as the assessee had failed to provide reasonable explanation regarding the sources of funds for the said amount, both AO and CIT(A) were justified in making the addition in question.

Therefore, the Tribunal upheld the additions made by the AO and as confirmed by CIT(A). In the result, the appeal of assessee was dismissed.

2. Section-37(1) "Deductions":

Where the assessee is engaged in the business of leasing and hiring of such machineries, expenses incurred on account of purchase of Plant & Machinery and Equipment will be considered as revenue in nature - allowed for deduction

In the instant case[2], the assessee had filed its return of income for the A.Y. 1997-1998, declaring loss amongst others, owing to exchange fluctuation.

[1] **Anandtex International Pvt Ltd Vs ACIT (ITAT, Delhi) [2022]**

[2] **Wipro Finance Ltd. Vs Commissioner of Income Tax (Supreme Court of India) [2022]**

After processing of the return under Section 143(1)(a) of the Income Tax Act, 1961, the loss declared by the appellant due to exchange fluctuation was concluded as positive taxable income, thereby disallowed.

Against that decision, the matter was carried in appeal by the appellant before the CIT(A) and eventually, by way of appeal before the Income Tax Appellate Tribunal.

In the appeal before the ITAT, the appellant not only claimed deduction in respect of loss arising on account of exchange fluctuation, but also set up a fresh claim in respect of revenue expenses erroneously capitalised in the returns. The ITAT entertained this fresh claim set forth by the appellant and recorded in its judgment that the department's representative had no objection in that regard. The ITAT reversed the finding given by CIT(A) regarding application of Section 43A of the Act. The ITAT opined that the said provision had no application to the fact situation of the present case. It further concluded the decision in favour of assessee regarding the loss suffered by it owing to exchange fluctuation and held that the same could be regarded as revenue expenditure and an allowable deduction.

The matter was further carried before the High Court by the Revenue which reversed the decision given by the ITAT by holding that the ITAT had not recorded sufficient reasons in support of its conclusion and that the conclusion was without any basis.

The Hon'ble Supreme Court, after going through the facts and circumstances of the case, opined that the assessee had taken loan in foreign currency for expanding its primary business of leasing and hire purchase of capital equipment. Upon repayment, the assessee had incurred loss due to exchange fluctuation. The activity of financing by the assessee to its customers for procurement or acquisition of plant, machinery and equipment on leasing and hire purchase basis pertains to the nature of its business. Thus, it was held that the assessee would be justified in availing deduction of entire expenditure or loss suffered by it in connection with such a transaction in terms of Section 37 of the Act as the loan was wholly and exclusively used for the purpose of business of financing the enterprises, who in turn, had to acquire plant, machinery and equipment to be used by them. The Hon'ble Supreme Court further added that the ITAT was right in answering the claim of the appellant in the affirmative by relying on the decision of Supreme Court in India Cements Ltd. vs. Commissioner of Income Tax, Madras.

In the conclusion, assessee's appeal was allowed. The order of the High Court was set aside and the decision of the ITAT in the matter decided in favour of the assessee was restored.

3. Section 40(a)(ia)

Where there is shortfall in TDS deducted by assessee, then assessee can be treated as an assessee in default under section 201(1)/201(1A) and shortfall in TDS amount and consequent interest thereon can be recovered later on, but sum paid by assessee cannot be disallowed under section 40(a)(ia), by holding that assessee has not deducted TDS on said payment.

In the instant case[3], the assessee, an individual engaged in trading-business, had paid compensation

[3] **M.V.A. Seetharama Raju Vs Deputy Commissioner of Income-tax (ITAT Chennai) [2022]**

for breach of contract for non-supply and such payment had been made after deducting TDS at the rate of 2% in terms of the provisions of Section-194A, as applicable to contractors/subcontractors.

The AO had disallowed part of compensation paid by the assessee under section 40(a)(ia), on the ground that the assessee had deducted TDS at lesser rates and stated that it was as good as non-deduction of TDS on remaining part of the amount.

Aggrieved, the assessee went for an appeal before the CIT(A) which sustained the addition made by the AO towards disallowance of compensation paid by the assessee under section 40(a)(ia) for non-deduction of TDS.

Aggrieved the assessee went for an appeal before the Tribunal wherein the assessee submitted that the Ld. CIT(A) had erred in sustaining additions made by the AO towards disallowance of compensation paid for breach of contract u/s.40(a)(ia) of the Act, even though the assessee had deducted applicable TDS@2% in terms of the provisions of section 194A of the Act. The assessee further argued that the sum paid by it could not be considered as interest by any means because what was paid by the assessee was compensation for breach of contract, but not sum which would be in the nature of interest, which attracts TDS@10% u/s 194A of the Act and to support his contention, he relied upon the decision of the Hon'ble Calcutta High Court in the case of DCIT Vs S.K. Tekriwal [2011].

In response, the Ld. DR supporting the order of the Ld. CIT(A), submitted that as per decision of the Hon'ble Kerala High Court in the case of CIT Vs P V S Memorial Hospital Ltd.[2015], if assessee had deducted TDS at lower rate, then it is not sufficient compliance of provisions of section 40(a)(ia) of the Act, and thus, sum paid by the assessee could not be allowed as deduction u/s.40(a)(ia) of the Act.

After hearing both the parties and going through the records, the Hon'ble Tribunal was of the view that the reasons given by the AO for disallowance in this case were not justified for simple reason that once the assessee deducted TDS on any payment made, then said payment could not be disallowed u/s 40(a)(ia) of the Act, even if, the assessee had deducted TDS at lower rate or under different TDS provisions of the Act.

Referring to shortfall in TDS deducted by the assessee, the Tribunal said that the assessee can be treated as an assessee in default u/s.201(1)/201(1A) and the shortfall in TDS amount and consequent interest thereon would be recovered from the assessee, but sum paid by the assessee could not be disallowed u/s.40(a)(ia) of the Act.

In the result, the AO was directed by the Tribunal to delete the additions made towards disallowance of expenses u/s 40(a)(ia) of the Act and the appeal of the assessee was allowed.

4. Section-148 "Reassessment":

Reopening of assessment under Section 147 after the expiry of 4 years from the end of the relevant assessment year based on the self-same material which were already available before the Assessing Officer during the course of regular assessment was a mere change of opinion not sustainable in law

In the instant case[4], the assessee had challenged the notice issued to it by the Assessing Officer (AO) under Section 148 of the Income Tax Act, 1961 before the Hon'ble Supreme Court (SC). The assessee had previously filed an objection against the said notice which was rejected by the AO.

Speaking of the facts of the case, the main issue was related to a payment as 'referral to doctors' which was claimed by the assessee as business expense in its return of income filed for the A.Y. 2011-12 and the AO had allowed deduction for the said expense after due consideration of the relevant materials placed on record in course of regular assessment proceeding.

However, initiation of reopening of the assessment was made after expiry of four years from the end of relevant assessment year in response of which the assessee objected before the Hon'ble SC that the initiation of proceeding of reopening of assessment in question under Section 147 of the Act was based merely on change of opinion and neither there was any new material which came to the notice or knowledge of the AO nor there was any case made out or recorded by the AO either in the impugned notice under Section 148 of the Act or in the recorded reason for reopening of assessment that there was any omission or failure on the part of the assessee/petitioner to disclose fully and truly all material facts necessary during the assessment proceeding for the relevant assessment year. Thus, it did not fulfil the condition precedent/criteria for reopening of assessment after expiry of four years from the end of relevant assessment year.

The Revenue, in response, submitted before the Court that even if there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the regular assessment in question at the time of relevant regular assessments still if there was escapement of any income, notice under Section 148 of the Act can be issued after expiry of four years from the end of relevant assessment year. Referring to the issue of change of opinion, he further submitted that there was no change of opinion but he could not demonstrate from any materials on record that the documents or materials on the basis of which the respondent AO had formed the opinion, had not been disclosed by the assessee or the same were not available before the AO at the time of regular assessment under Section 143 (3) of the Act.

Considering the facts and circumstances of the case, the Court held that the condition precedent for invoking Section 147 of the Act for reopening of assessments after expiry of four years from the end of relevant assessment years had not been fulfilled and the impugned reopening of assessment was based on mere change of opinion. Therefore, the impugned notices issued under Section 148 of the Act were held as bad and not sustainable in law and thus, the said notices and all subsequent proceedings on the basis of the aforesaid impugned notices under Section 148 were quashed.

[4] **Peerless Hospitex Hospital and Research Center Limited Vs Principal Commissioner of Income Tax, Kolkata & Ors (High Court of Calcutta) [2022]**