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Direct Tax Newsletter

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NEWS FEED

CBDT Notifies Form 3AF to be Furnished by Assessee Claiming Deduction u/s 35D

Notification No. 54/2023, dated 01-08-2023

Section 35D provides that an Indian company or any resident person can claim a deduction under this provision in respect of preliminary expenses. The Finance Act 2023 eased the condition for claiming amortization of such preliminary expenses following which, the CBDT inserted Rule 6ABBB to furnish the statement in Form No. 3AF, which is required to be furnished one month before the due date for furnishing the return of income as specified under section 139(1).

1. No Penalty for Misreporting of Income if Additions is Made Due to Deeming Fiction of Sec. 43CA/56(2)(x) - ITAT

In the instant case[1], the assessee-company filed its return of income for the relevant assessment year and the case was selected for scrutiny. During the scrutiny proceedings, the Assessing Officer (AO) made an addition under section 43CA read with section 56(2)(x). By virtue of this addition, penalty proceedings under section 270A were initiated on account of misreporting of income. The appeal of the assessee in quantum had been disposed of by the Commissioner (Appeals) against the assessee. Thereafter, the order of penalty under section 270A was finalized and penalty was imposed without waiting for the outcome of quantum appeal. The matter reached Mumbai Tribunal.

The Tribunal held that Section 270A deals with deeming income only in the case of additions made in section 115JB i.e. MAT provisions. In the instant case, additions were made by virtue of section 43CA read with section 56(2)(x) i.e. deeming provisions. In case of applicability of deeming provisions, there is no option provided in the statute except to make adjustments as per the figures derived from deeming sections vis-a-vis figures disclosed by the assessee.

In that situation, the case of the assessee does not fall in the category of under-reporting of the income. In the cases where deeming provisions applied for addition of income neither concealment of income nor under-reporting of income can be established against the assessee as there is no active participation of the assessee can be established in doing so.

Penalty initiated and imposed under section 270A for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the revenue has failed to specify the limb "under-reporting" or "misreporting" of income, under which the penalty proceedings had been initiated. There was not even a whisper as to which limb of section 270A was attracted and how section 270A(9) was satisfied.

In the absence of such particulars, the mere reference to the word "misreporting" by the revenue in the assessment order, for imposition of penalty makes the impugned order manifestly arbitrary. Therefore, no penalty can be imposed in this case, as there was no misreporting by assessee for the purposes of section 270A.

2. Section 127:

Provisions of Sec. 127 not Applicable on Transfer of an Assessee's Jurisdiction from One Place to Another - HC

In the instant case[2], the petitioner was a Company and part of a Group of Companies. The petitioner was engaged in the business of running a TV channel. There was a search in the company and other group concerns under section 132. Incriminating materials relating to the petitioner company were seized during the search and seizure conducted in the group concerns.

Later, the assessee contended that it shifted its registered place of business from Bangalore to Tamil Nadu. Considering that no notice under

[1] **Alrameez Construction (P.) Ltd. v. CIT/NFAC, Delhi (Mumbai-Trib.) [2023]**

[2] **Alliance Broadcasting (P.) Ltd. v. ACIT (Madras) [2023]**

section 127 was received, the assessee filed a writ petition contending that revenue didn't comply with the provision of section 127 and that all the proceedings under the search were void-ab-initio.

The High Court held that the writ petitions had been filed on the premise that the notice under section 127 had not been issued to the petitioner. However, the above submission has not been made in the written submissions.

Whether Section 127 would apply or not itself is debatable in view of the fact that the petitioner's registered place of business was shifted from Bangalore to Tamil Nadu and was intimated by the petitioner to the Department vide a letter.

It should be noted that section 127 of the Income-tax Act would apply only to cases where a case is transferred from one jurisdiction to another and not a transfer of jurisdiction of the assessee from one place to the other, as in the present case. Therefore, the writ petition was accordingly dismissed.

3. ITAT Directs AO to Allow Credit of Tax Deducted on Property Sale Despite Buyer not Depositing it with Govt.

In the instant case[3], during the year under consideration, the assessee-individual sold a property for a consideration exceeding Rs. 50 Lakhs. The purchaser deducted tax under section 194-IA at the rate of 1 percent of the sale consideration amount and paid the balance amount to the assessee.

However, the purchaser failed to deposit the tax, so deducted from Government's account and had not given the assessee the required Form 16B for deduction of tax at source. The assessee furnished its return of income and claimed credit of said TDS amount. Subsequently, the same was disallowed by Centralized Processing Centre (CPC), stating that the tax deducted was not deposited to the credit of the Government.

On appeal, CIT(A) upheld the order of CPC. Aggrieved by the order, an instant appeal was filed to the Delhi Tribunal.

The Tribunal held that perusing the agreement of sale cum GPA shows that the purchaser deducted the amount as TDS and surcharge at the rate of 1 per cent of the total sale consideration.

Under these circumstances, it is to be seen whether the assessee is liable for deposit/payment of the tax already deducted by the purchaser but not deposited or given credit.

Once the deductor has deducted the tax at source, withholds tax out of payments due/paid to the assessee, but does not deposit the tax withheld by it, the assessee should not suffer for the same and due credit of the tax is to be given to the assessee. The action under the provisions of the Income-tax Act can be taken against the deductor who, after deducting the tax, has not deposited the same to the credit of the Central Government.

The tax credit benefit to the assessee cannot be denied, and the only option left for the department is to proceed against the deductor by holding him as an assessee-in-default. Therefore, the order of the Commissioner (Appeals) was set aside, and the CPC was directed to give due credit to the assessee.

[3] **Rajesh Dadu v. Deputy Commissioner of Income-tax - [2023] (Hyderabad-Trib.)**

4. Assessee's Return Accepted if AO Doesn't Pass Timely Order After ITAT Remanded Matter Back to Him - HC

In the instant case[4], assessee-company filed its return of income for the relevant assessment year. Assessing Officer (AO) passed an order making an addition on account of corporate charges. He also made disallowance of project expenses and also disallowed deductions under section 10B and, accordingly, raised tax demand. An outstanding refund relating to the previous assessment year 2006-07 payable to the assessee was adjusted against demand raised for the relevant assessment year.

On appeal, Tribunal remanded back to AO for de novo consideration and passing fresh orders. However, AO failed to pass any order, and the assessment became time barred under sections 153(3) and 153(4). The matter reached the Delhi High Court.

The Delhi High Court held that since assessment became time-barred, income returned by the assessee for the relevant assessment year would stand accepted. Thus, any amount due to the assessee as refund for the previous assessment year, which was adjusted in the relevant year, was to be refunded along with interest as applicable.

[4] **Aricent Technologies (Holdings) Ltd. v. ACIT (Delhi)[2023]**