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Tax Digest

- Recent case laws

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Govt. Notifies 'Exchange of Information With Respect to Taxes' Agreement With Samoa

Notification No. 21/2024, dated 07-02-2024

The Ministry of Finance has notified the agreement for the Exchange of Information with respect to taxes with the Government of Samoa. The agreement was signed at Apia, Samoa, on the 12th day of March, 2020.

The agreement comprises 13 articles, encompassing articles such as taxes covered, Exchange of Information Upon Request, Tax Examinations Abroad, Possibility of Declining a Request for Information, MAP, and others.

1. Loose Sheets Found in House of 3rd Party Can't be Considered As Evidence Without Producing Corroborative Evidence

In the instant case¹, the Assessing Officer (AO) filed the instant writ petition challenging the order passed by the single Judge of the Karnataka High Court. The case involved AO searching at the premises of one Rajendran at New Delhi and recovering certain diaries/loose sheets, which purportedly consisted of certain entries relating to the assessee.

Based on Rajendran's statement during the investigation, AO initiated action against the assessee. Assessee challenged the action taken by AO, and the single Judge of the High Court set aside the initiation of proceedings by setting aside the notice issued to the assessee under Section 153C.

It was contended by the AO that single Judge was not right in referring to Section 34 of the Evidence Act and then holding that loose sheets cannot be considered as evidence. The single judge failed to appreciate one more aspect: Section 132 refers to not only books of accounts but also other documents. Even if it is to be assumed that the loose sheets would not fall within the ambit of books of accounts, undoubtedly, the same would fall within the ambit of documents.

The Karnataka High Court held that the entire allegation was made out based on loose sheets of documents, which does not come under the ambit and scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

The Hon'ble Supreme Court, in the case of Common Cause And Others v. Union of India [2017] 77 taxmann.com 245 (SC), has ruled that a sheet of paper containing typed entries in loose form, not

shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence.

Thus, the action taken by AO against the assessee based on the material contained in the diaries/loose sheets was contrary to the law declared by the Hon'ble Apex Court.

Accordingly, notices issued under Section 153C, based on the loose sheets/diaries, are contrary to law, which is required to be set aside in these writ appeals, as the same is void and illegal.

2. Criminal Liability of Co. Gets Wiped Off Once it's Taken Over by New Management Pursuant to Resolution Plan

In the instant case², the Income Tax Department prosecuted company A1 and its erstwhile Directors for offences under the Income-tax Act committed during various assessment years from 2010-2011 to 2015 – 2016.

Later, a resolution plan was approved in its favour by the National Company Law Tribunal (NCLT), and a new management took over the company.

The new management filed the present petition on the ground that, as per 32A of IBC, the liability of Company-A1 completely gets wiped off after the NCLT approves the resolution plan. Therefore, the prosecution as against company-A1 cannot be continued.

The Madras High Court held that the moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is

¹ DCIT v. Sunil Kumar Sharma [2024] (High Court of Karnataka)

² Vasan Healthcare (P.) Ltd. v. DDIT (Investigation) [2024] (High Court of Madras)

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accepted by the NCLT, the moratorium comes into operation.

Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new management takes over the company with clean slate.

In the instant case, company A1 has now gone into the hands of the new management, pursuant to the order passed by the NCLT. In view of this, the new management takes over company A1 as a clean slate, and the criminal liability can no longer be mulcted as against company A1. Therefore, the continuation of criminal proceedings against company A1 can no longer subsist.

3. No Limitation Period Prescribed for Compounding of Offences Under Income Tax Act

In the instant case³, the Assessee faced a delay in filing its income tax return due to a disagreement between auditors in India and Singapore. The return was filed on 14.05.2018, followed by prosecution initiated on 03.01.2019, with summons issued on 09.11.2021.

After receiving the summons on 19.05.2022, the assessee filed a compounding application, which was rejected for being beyond the time limit specified in the guidelines issued by the Central Board of Direct Taxes (CBDT) on 14.06.2019.

Assessee filed the writ petition before the Madras High Court.

³ Photon Kathaas Production (P.) Ltd. v. DGIT (Investigation) [2024] (High Court of Madras)

The Madras High Court held that the provision outlined in subsection (2) of Section 279, pertaining to the compounding of offences, grants the Commissioner the authority to compound such offences either before or after the commencement of proceedings.

Neither subsection (2) nor any of the other subsections of Section 279 prescribe a period of limitation with regard to the compounding of offences.

By taking note of this aspect, the guidelines issued by the CBDT were quashed by the Madras High Court in the case of Jayshree vs. the Central Board of Direct Taxes W.P.No.2968 & 2970 of 2023, dated 03-11-2023.

Even otherwise, the complaint was lodged on 03.01.2019, about fifteen months lapsed between the date of the complaint and the onset of the COVID-19 pandemic. If the period excluded under orders of the Supreme Court, i.e. the period running from 15.03.2020 to 28.02.2022, is excluded, the compounding application filed on 19.05.2022 would be within the period prescribed in the guidelines.

Thus, CBDT was directed to dispose of the compounding application within a maximum period of one month from receipt of a copy of the order after providing a reasonable opportunity.

4. AO's Order Couldn't Be Held Erroneous If He Accepted Assessee's Claim Relying on SC's Ruling

In the instant case⁴, the assessee received enhanced compensation from the State

⁴ Pawan Kumar vs. Principal Commissioner of Income-tax [2024] (Delhi-Trib.)

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Government for the compulsory acquisition of his agricultural land, which included interest under section 28 of the Land Acquisition Act. He claimed the interest income was exempt under section 10(37). Relying upon the ruling by the Supreme Court, the Assessing Officer (AO) allowed the assessee's claim. Subsequently, in exercising his powers under section 263, the Commissioner contended that AO's order was erroneous and prejudicial to the interest of revenue. The Commissioner opined the interest received on the compensation or enhanced compensation would be taxed as per amended provisions introduced through the Finance Act, 2009 and not under the head 'capital gains'.

Aggrieved by the order, the assessee filed an appeal to the Delhi Tribunal.

The Tribunal held that the order of the Assessing Officer was based on the decision of the Supreme Court in Ghanshyam HUF v. CIT [2009] 182 Taxman 368. During assessment, assessee explained that interest received under section 28 of the Land Acquisition Act had been held to be part of compensation by the Apex Court in the case of Ghanshyam HUF (supra). Thus, the same being exempt under section 10(37) has not been included in the assessee's total income while filing return of income. The Assessing Officer accepted the explanation of the assessee.

The position in Ghanshyam HUF's case has been affirmed by the Supreme Court in UOI v. Hari Singh (2018) 91 taxmann.com 20 (SC). Further, the assessee submitted that the SLP filed by the revenue in Hari Singh's case had been withdrawn by the revenue, meaning that the issue has now attained certainty.

Since the order of AO was based on the decision of the Supreme Court in Ghanshyam HUF (supra), it can, at best, be said to be a debatable issue on which two views are possible, and AO accepted one of the views. Thus, the Principal Commissioner was not justified in setting aside assessment order under section 263.