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Tax Digest

- Recent case laws

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Net Direct Tax Collection Up To 01-02-2024 Stands at Rs. 15.60 Lakh Crore, Up By 20.25% From Last Year

Press Release, dated 11-02-2024

The Central Board of Direct Taxes (CBDT) has released provisional figures for Direct Tax collections. The Direct Tax collections up to 10 February 2024 show that gross collections are at Rs. 18.38 lakh crore, which is 17.30% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 15.60 lakh crore, which is 20.25 % higher than the net collections for the corresponding period of last year. This collection is 80.23% of the total Revised Estimates of Direct Taxes for FY 2023-24.

The gross revenue collections for Corporate Income Tax (CIT) and Personal Income Tax (PIT) also show a steady growth. Further, refunds amounting to Rs. 2.77 lakh crore have been issued from 1 April 2023 to 10 February 2024.

Direct Tax Updates

1. No Additions Towards Capitation Fee Relying Upon Documents Found From Employees of Trust

In the instant case[1], the Assessee-charitable trust registered under section 12A ran colleges. During the search, the Assessing Officer (AO) observed that the assessee had collected capitation fees through various employees for giving admission to students in various courses conducted by it and said the collection had not been accounted for in books.

Thus, he held that the collection violated clauses of the trust deed and the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act. He denied exemption under section 11 on the ground that the assessee was not carrying out any charitable activity.

The matter was reached before the Mumbai Tribunal.

The Tribunal held that AO had concluded that the assessee had collected capitation fees based on data found in laptops, pen drives, diaries, and loose papers seized from various employees of the assessee from their residences.

Also, the trustees of the assessee had stated that they had not authorized anyone to collect capitation fees. Furthermore, AO did not find/seize any credible material from the assessee to corroborate information/documents seized from employees.

Documents seized from employees could not be considered as having any evidentiary value and could not be considered to have trustworthiness. Since no other corroborative material was brought on record to support the veracity of the same, additions made by the Assessing Officer were to be deleted.

[1] Padmashree Dr. D.Y. Patil University v. DCIT [2024] (ITAT Mumbai)

2. AO to Consider Modified ITR Filed Manually If e-Filing Portal Wasn't Enabled to Accept It

In the instant case[2], the assessee was a private limited company engaged in the business of manufacturing and trading of yarn and fabric. During the financial year 2020-21, the assessee filed an application before the National Company Law Tribunal (NCLT) seeking approval for a scheme of amalgamation. Under the said scheme of amalgamation, the other company was merged with the assessee and dissolved without being wound up. The NCLT sanctioned the scheme on 18.04.2022.

Relying upon section 170A, the assessee filed a manual modified return giving effect to the amalgamation as the portal was not enabled to file such an electronic return. Meanwhile, the Assessing Officer (AO) passed an assessment order ignoring the modified return of income. Aggrieved by the order, the assessee filed a writ petition to the Madras High Court.

The High Court held that Section 170A was inserted by the Finance Act 2022 with effect from 01.04.2022, and the provision indicates that any assessment after the business reorganization was sanctioned should be based on the modified return. The provision mandated that a successor of a business reorganization is required to furnish the modified return within six months from the end of the month in which the order of the court or tribunal sanctioning such business reorganization is issued.

[2] Pallava Textiles Private Limited vs. ACIT [2024] (High Court of Madras)

Further, it appeared that the assessee submitted a physical copy of such a modified return on 24.08.2022. Since the last date for filing the return was expiring earlier, the assessee previously submitted the return of the company on a standalone basis on 14.03.2022.

From the list of dates and events, it was clear that the first notice to the assessee under Section 143(2) was issued subsequent to the effective date of the merger. All other notices culminating in the impugned assessment order were issued later. In view of the scheme of amalgamation having become effective and thereby operational from 01.04.2020, the assessee's consolidated return of income, after its amalgamation, should have been the basis for assessment based on the scrutiny.'

It was noticed that the AO considered the standalone returns of the assessee, the standalone returns and the consolidated returns of the merged entity for different purposes. Such an approach cannot be countenanced. Even without going into the other contentions, the assessment order calls for interference on this ground.

Accordingly, the assessment order was quashed.

3. Delay in Payment of Tax Can't be Equated With Wilful Attempt to Evade Tax

In the instant case[3], the case in question was a criminal complaint filed by the Income Tax Department against Unique Trading Company and its partners for an offence punishable under Section 276C(2) of the Income Tax Act, 1961. The section deals with the wilful attempt to evade the payment of tax, penalty or interest under the Act. The Income Tax Department alleged that the company had wilfully attempted to evade the tax payment and sought to prosecute the company and its partners for the same.

The company, however, argued that the delay in tax payment was not a wilful attempt to evade the tax payment. It was also argued that it had paid the tax due immediately after the service of the show cause notice. After hearing both sides, the Bombay High Court agreed with the company and quashed the criminal complaint filed by the Income Tax Department.

The High Court observed that the delay in tax payment was not a wilful attempt to evade the tax payment. It also observed that the company had paid the tax due immediately after the service of the show cause notice and that the tax due was paid in full.

The court also noted that the company had paid the interest on the due amount and that the tax due was paid under 5 days of the service of the show cause notice. The court also observed that the company had declared the income and assessed the self-assessment tax. It was neither a case of underreporting income nor showing diminished tax liability.

Accordingly, prosecution for alleged offence punishable under section 276C(2) was to be quashed.

4. No TDS u/s 194C on minimum guarantee payments to hotels for using the assessee's platform for reservation

In the instant case[4], the assessee, was engaged in the business of providing a platform services to hotels for booking of accommodation, lodging etc.

[3] Unique Trading Co. v. ITO [2024] (High Court of Bombay)

[4] Oravel Stays (P) Ltd vs. Assistant Commissioner of Income-tax, Special Range-7 [2024] (Delhi-Trib.)

It filed its Return of Income on 29.09.2015 declaring loss of Rs. 29.82 crores. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has not deducted tax at source on minimum guarantee expense of Rs. 3,61,98,948/-. The assessee was asked to show cause why this expense should not be disallowed u/s 40(a)(ia) of the Act. The Assessee in turn explained that these payments were not covered under Chapter XVII-B of the Act and therefore, no TDS has been deducted.

The CIT(Appeals) held that the case was not covered under Section 194-I of the Act (rent) but was squarely covered under Section 194-C being a contractual payments.

Before the Ld ITAT, the assessee stated that a minimum guarantee expense was not any payment towards any contract but it is in the nature of compensatory payment for shortfall in room occupancy. The assessee guarantees the hotels for certain minimum occupancy of the rooms and if the occupancy is not achieved, the assessee compensates the shortfall. Since no “work” was carried out, the same would not be covered under section 194-C.

It was observed that on such business model, provisions of section 194C of the Act provides that any person responsible for paying any sum to any resident for “carrying out any work” in pursuance of a contract between the contractor and a specified person shall deduct tax on the sum paid or credited to the account of the contractor, sine qua non for applicability of this provision is "Carrying out any Work". Facts on record show that no work has been carried out, hence the section has no application here.

Accordingly, the assessee’s appeal was allowed.