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## Tax Digest

- Recent case laws

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**NEWS**

**FEED**

*CBDT issues refunds of over Rs. 1,71,555 crore to more than 1.97 crore taxpayers from 1st Apr,2021 to 14th Feb,2022. Income tax refunds of Rs. 63,234 crore have been issued in 1,95,17,945 cases & corporate tax refunds of Rs. 1,08,322 crore have been issued in 2,28,604 cases.*

## 1. Section-250:

**Disallowance could not be made where the assessee fails to upload required forms within stipulated time period but manages to upload the same with revised return.**

In the instant case<sup>1</sup>, the Ld. CIT(A) made a disallowance on the grounds of non-submission of Audit Report in Form 10BB within the stipulated time period through an order u/s 250 of the Income Tax Act (hereinafter referred to as the “Act”) by rejecting the claim of the assessee without properly appreciating the explanation and evidences filed by him which was held to be arbitrary, erroneous and hence unsustainable in law.

Aggrieved, the assessee went for an appeal to the Tribunal wherein the Id. Counsel for the assessee submitted that the impugned additions were made by the AO on the ground that the assessee had failed to upload Form 10BB along with return of income but the assessee had immediately cured the defect and filed Form 10BB soon after he received the intimation u/s 143(1). However, the same was refused by the Income Tax Authority and the assessment order remained unrectified.

After hearing the counterparties, the Tribunal stated that IT Department had been allotted with the duty to help the assessee to file their correct return of income along with required documents. And since in this case, the said form was duly filed by the assessee on receipt of intimation from the Department, therefore, the concerned AO was asked to consider the same and pass appropriate order as per law,

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<sup>1</sup> Bantra Anath Bandu Samity Vs Additional Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]

irrespective of the fact that the assessee could not upload the same earlier. In view of this, the impugned order of the CIT(A) was set aside and the appeal of the assessee was allowed for statistical purposes.

## 2. Section-147-“Reopening”:

**Estimation of profit cannot be held incorrect where the books of accounts are not rejected by Assessing Officer beforehand.**

In the instant case<sup>2</sup>, the assessee’s case was reopened u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the ADIT(Inv) stating that the assessee had maintained a bank account through which, huge transaction of money have been made by the assessee on different dates. On requisition made by the AO, the Ld. A.R. of the assessee had filed the relevant documents along with copy of the bank statement. However, AO was of the view that the assessee failed to conclusively substantiate the genuineness of the transaction reflected in the bank account and could not produce the necessary documents/evidence. Therefore, the AO made an addition as unexplained cash credit u/s 68 of the Act. Along with that, an addition was also made by the AO to the Net Profit disclosed by the assessee.

Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who deleted the addition made on grounds of unexplained cash credit but sustained the addition made to Net Profit.

Also aggrieved by the action of the Ld.CIT(A), the assessee went to the Tribunal wherein the Ld.AR

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<sup>2</sup> Saraswati Gupta Vs Income Tax Officer, Kolkata (ITAT Kolkata) [2022]

reasoned that the assessee dealt in the business of iron and steel where sales were mostly made through cash which had been regularly deposited in her bank account. She had been depositing the sale consideration and withdrawing amounts for purchase of goods as per requirement of the business on regular basis. Therefore, the net profit stated by the assessee in her return of income was reasonable on the abovementioned ground.

After hearing the rival contentions, the Tribunal held that the addition made by the AO in the present case with respect to estimation of profit was not legally tenable as the said addition could have been made only after rejection of books of account submitted by the assessee before the AO. Furthermore, in order to estimate the income of the assessee (based on best judgment assessment) as provided for u/s 144 of the Act, the AO would have to first reject the books of account and then resort to section 145 of the Act and after giving a finding that the assessee had not regularly followed the method of accounting as mentioned u/s 145(1) of the Act or that the assessee had not computed the income in accordance with the accounting standard notified u/s 145(2) of the Act or that the AO was not satisfied about the correctness or completeness of the books maintained by the assessee, then only the AO could have resorted to estimation of the income of the assessee u/s 144 of the Act. Since the said condition precedent was not satisfied as was discernible from the AO's order and since the Ld. CIT(A) had also not rejected the books of accounts, the addition made in respect of estimation of net profit was not justified. Hence, the appeal of the assessee was allowed.

### **3. Section-147/143(3)-“Re-Assessment”:**

In the instant case<sup>3</sup>, additions were made by the Assessing Officer to assessee's income by treating the long-term capital gains shown by the assessee as bogus, alleging further that the assessee had traded in the shares of a penny stock company and thereby the assessee had booked bogus LTCG out of his unaccounted income.

In response to the said addition, the assessee objected to the show-cause notice issued by the AO, wherein, the assessee submitted that he had not dealt with any shares of the alleged company during the assessment year under consideration. But the said addition was also confirmed by the CIT(A).

Aggrieved, the assessee went for an appeal before the Tribunal wherein the Id. counsel argued that the AO had framed the assessment in a mechanical manner without considering the above plea of the assessee. The Id. DR failed to point out as to how both the lower authorities were justified in making the impugned additions when the assessee had taken a categorical stand that he had not dealt in the alleged script which showed that the impugned assessment order as well as the order of the Id. CIT(A) were passed in a mechanical manner without even considering the facts of the file. The impugned additions thus were held to be not sustainable in the eyes of law and accordingly, the order of the Id. CIT(A) was set aside and the said additions were deleted.

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<sup>3</sup> Pawan Kumar Gupta Vs Additional Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]

**4. Section-43B “Contribution to PF”:**

**Whether the insertion of Explanation 5 to Section-43B as inserted by the Finance Act, 2021 is prospective or retrospective in nature?**

In the instant case<sup>4</sup>, an addition was made u/s 36 on account of delayed payment of contribution to Provident Fund for A.Y.-2017-18 by AO which was also confirmed by CIT(A).

Aggrieved, the assessee went for an appeal before the Tribunal wherein the Id. Counsel for the assessee submitted that there was a delay in depositing employee's as well as employer's contribution to the Employee's Provident Fund/ESI fund. However, the amount was deposited before the due date of the filing of income tax return and further submitted that the said issue had been squarely covered by the decision of the Hon'ble Jurisdictional Calcutta High Court in the case of CIT, Kolkata vs. M/s Vijay Shree Limited [43 taxman.com 396(Cal)] which had been further followed by the Coordinate Calcutta Bench of the Tribunal in the case of Harendra Nath Biswas vs.DCIT in [ITA No.186/Kol/2021] by the order dated 16.07.2021 in response of which, the Id. DR could not show any decision contrary to the case law cited by the Id. Counsel for the assessee.

Relying on the above mentioned decisions, the Tribunal held that the Explanation-5 inserted by Finance Act, 2021 to section 43B w.e.f. 01.04.2021 was not applicable to the assessment year under consideration in the instant case. Therefore, assessee's appeal was allowed and the impugned additions were deleted.

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<sup>4</sup> Dozco (India) Pvt Ltd Vs Deputy Commissioner of Income Tax,Bangalore (ITAT Kolkata) [2022]