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Tax Digest

- **Recent case laws**

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CBDT notifies ITR-6 for the Assessment Year 2024-25

Notification No. 16/2024

The Central Board of Direct Taxes (CBDT) has notified Income-tax Return Form 6 for the Assessment Year 2024-25 vide Notification No. 16/2024, dated 24-01-2024. Earlier the board has notified the Income-tax Return (ITR) forms 1 & 4 for the Assessment Year 2024-25 vide Notification no. 105/2023, dated 22-12-2023

Direct Tax Updates

1. ITAT Can Rectify Its Order If It Failed to Consider Amendment Made in CBDT Circular While Deciding the Appeal

In the instant case[1], the Assessing Officer (AO) made additions as undisclosed income to the assessee's total income for the relevant assessment year. The additions were made per the CBI investigation, and the assessee didn't refute the additional income that belonged to him through any documentary evidence.

On appeal, the CIT(A) set aside the order passed by the AO. Further, the Tribunal dismissed the AO's appeal due to the low tax effect. After that, the AO preferred an application under Section 254(2), contending that monetary limits would not apply. Accordingly, there was an apparent mistake on the face of the record in the order passed by ITAT.

The Tribunal admitted the application, and the assessee filed the instant writ petition against such admission before the Chhattisgarh High Court.

The High Court held that from a bare perusal of section 254(2), it was quite clear that if any patent, manifest and self-evident error cropped up in the order passed by the Tribunal which does not require elaborate discussion of evidence or argument to establish it can be said to be an error apparent on the face of the record and can be corrected while exercising jurisdiction under this Act.

Further, the Tribunal, in the instant case, while dismissing the appeal, had taken into consideration the circular dated 11-7-2018 but did not consider when the circular was amended on 20-7-2018. The circular was amended by inserting clause 10(e), which clearly provided that if additions based on information received from external sources like law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI), the issues will be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified or there is no tax effect.

From the factual and legal position, it is quite vivid that the Tribunal has not committed any illegality in allowing the Miscellaneous Application vide its order dated 19-10-2023, as is apparent on the face of the record, which can very well be rectified by the Tribunal while exercising the power under section 254(2).

Therefore, while considering the application under section 254(2), the Tribunal is not required to revisit the earlier order and go into the details of merits. The powers under section 254(2) are only to rectify/correct any mistake apparent from the record.

Thus, the writ petition was dismissed.

2. Delhi HC Quashes CIC's Order Directing IT Dept. to Provide Info. Related to PM CARES Fund

In the instant case[2], an application under the RTI Act was filed seeking the procedure followed in granting exemption under section 80G of the Income-tax Act (IT Act) to the PM CARES Fund by the Income Tax Department (I-T Dept.). It was contended that he wanted to know the exact procedure followed by the Income Tax Department in granting such a swift approval and to see

[1] Ajit Pramod v. Income-tax Officer - [2024] (High Court of Chhattisgarh)

[2] CPIO/Deputy Commissioner of Income-tax, HQ. Exemption vs. Girish Mittal - [2024](High Court of Delhi)

whether any rules or procedures were by-passed in granting such approval.

The Central Information Commission (CIC) ordered the I-T dept. to grant information as demanded by the applicant. Aggrieved by such an order, the I-T Dept filed a writ petition before the Delhi High Court.

The High Court held that section 138(1) of the IT Act provides that when a person makes an application in the prescribed form for any information relating to an assessee, the respective authority may, if he is satisfied that it is in the public interest to do so, furnish or cause to be furnished the information asked for.

Further, sub-section (2) to section 138 contains a non-obstante clause which states that notwithstanding anything contained in sub-section (1) or any other law for the time being in force, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order.

The RTI Act also has a non-obstante clause in the form of Section 22, which says that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law.

A reading of both Acts shows that there is an inconsistency between the provisions of the RTI Act and the IT Act. Therefore, the question which arises for consideration is which Act will prevail.

The Income Tax Act focuses on specific provisions and laws concerning income tax. At the same time, the RTI Act is a general law that addresses providing information to citizens, facilitating their Right to Information.

Ordinarily, if there are two non-obstante clauses, the latter prevails over the former. At the same time, the applicability and overriding effect of an Act over other statutes cannot be decided merely by when the concerned Act comes into force. It is for the Courts to discern and interpret which Act will prevail over the other.

Thus, the Delhi High Court held that the IT Act, which is a special Act governing all the provisions and laws relating to income tax and super-tax in the country, will prevail over the RTI Act, which is in the nature of a General Act.

Further, the petitioner sought information from the Income Tax Department, not from the PM CARES Fund. As the requested information pertains to a third party, PM CARES Fund should have been given an opportunity to be heard according to Section 11 of the RTI Act. The CIC should have followed the prescribed procedure under Section 11 before ordering the release of information.

Accordingly, the CIC lacks the authority to instruct the release of information under Section 138 of the IT Act. Even if it had such jurisdiction, the failure to notify PM CARES of the hearing would invalidate the decision.

3. Severance Compensation Received on Voluntary Basis Towards Termination of Employment is a Capital Receipt

In the instant case[3], the assessee filed his return, which CPC processed, and an intimation order under section 143(1) was issued. Subsequently, the

[3] Shamik Pankajbhai Parikh vs. Income-tax Officer - [2024] (Ahmedabad-Trib.)

assessee realized that the income offered by him to tax included a certain sum paid to him by way of severance compensation by the employer towards the cessation of his employment. The assessee believed that such one-time compensation received by the assessee from his employers was a 'capital receipt' and, hence, not chargeable to tax.

Accordingly, the assessee applied for rectification of the intimation. However, the same was rejected by the Assessing Officer (AO) on the ground that the amount was not bifurcated and shown as exempt by the assessee in the return of income. Thus, the same was not a mistake for the purposes of section 154.

On appeal, the CIT(A) also upheld the order passed by the AO. Aggrieved by the order, the assessee filed an appeal before the Ahmedabad Tribunal.

The Tribunal held that on perusal of the terms of employment letter of the assessee, the amount paid to the assessee as compensation towards the discharge of his services was voluntary in nature. Also, it was not disputed that the severance compensation received by the assessee voluntarily towards the termination of employment from his employers is a 'capital receipt' and, hence, not taxable in the hands of the assessee.

AO is competent to rectify any mistake in the intimation under section 143(1), which was brought to his notice by the assessee. From a bare reading of section 154, it is apparent that the power of rectification extends to the amendment of an intimation or deemed intimation under section 143(1). This rectification power enures even after the matter has been considered and decided in any proceedings through appeal or revision. This power extends even at the appeal stage and further appeal to the Tribunal.

Further, as per provisions of section 143(1), the authority has to examine whether any claim made by the assessee is correct or not. This includes understatement and overstatement of the income. If the AO failed to take note of any incorrect claim with regard to the total income of the assessee, such failure would necessarily mean a mistake apparent from the record.

Therefore, the amount received by the assessee as voluntary severance compensation is held to be not taxable in the hands of the assessee, and the same was liable to be deleted under section 154.

4. Madras HC Upheld Constitutional Validity of Sec. 194N; Said It Is a Worthy Move to Reduce Cash Transactions

In the instant case[4], the instant writ petition was filed before the Madras High Court seeking a declaration that Section 194N of the Income Tax Act, 1961 is unlawful, arbitrary, violates fundamental rights under Articles 14 and 19(i)(g), and is unenforceable and unconstitutional.

Petitioner contended that the deductor under Chapter XVII is required to deduct/collect from any payments made to a deductee. Such a requirement is only in cases where the receipt or some portion constitutes taxable income. Since the cash withdrawal is not taxable, the question of deduction/collection does not arise.

The High Court held that the contention that Section 194N was a charge of tax on the amount withdrawn in cash was unsustainable as there could be no charging provision other than Sections 4 or 5 of the Income Tax Act. It was pointed out that the very

[4] Income Tax Officer vs. Thanjavur District Central Co-operative Bank Ltd. - [2024] (High Court of Madras)

placement of Section 194N in Chapter XVIIB would show that it was not a charging provision, and several cases have been cited to establish that the sections under Chapter XVII B are only machinery provisions, not intended to fasten any charge.

The power of the Legislature to tax is set out under Article 265 of the Constitution, and such power is wide, subject to the conditions and tests that have been laid out over the years to provide for reasonable restrictions in this regard. Article 265 states that no tax shall be levied or collected except by 'authority of law'. What constitutes such 'authority' and what vests such power in the State would depend on the levy itself.

In deciding whether the levy is intra or ultra vires, the circumstances in which such levy has been introduced, the overall features of the levy as well as the attendant circumstances leading to the same, will have to be considered.

There have been several measures over the years to discourage and limit cash transactions, both under the Income Tax Act and other enactments. The challenge is now restricted to the modus operandi that the provision follows, as one hardly questions the legitimacy of the move to discourage cash transactions. We find that the object of Section 194N, as a measure to reduce cash transactions and gravitate towards an economy which is run in a transparent and accountable fashion, is laudable.

Further, the Legislature has provided for a situation where a payee, on the ground that the receipt is not amenable to tax, could seek and obtain a certificate from the Assessing Officer under Section 197. Such a certificate may be sought only in stipulated situations. Section 194N is not part of the list.

However, an alternative method is available under Section 194N, allowing the Central Government, in consultation with the Reserve Bank of India, to issue a Gazette Notification specifying recipients exempted or subject to a reduced rate under this section. Thus, the recipient is not left remediless.

Accordingly, the writ petition was dismissed.