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Tax Digest

- Recent case laws

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Direct Tax Updates

NEWS FEED

1. *CBDT notifies Form 56FF to be furnished by assessee claiming Sec. 10A deduction*

2. *CBDT notifies Faceless Appeal Scheme, 2021; CIT(A) is bound to allow request for personal hearing*

1. **As new reassessment provisions/procedure/time-limits made applicable w.e.f. 1-4-2021 by FA 2021, reassessment notices issued on or after 1-4-2021 must comply with new procedure/provisions/time-limits.**

In the instant case[1], the Hon'ble Delhi High Court was of the view that as the Legislature had introduced the new provisions, Sections 147 to 151 of the Income Tax Act, 1961 by way of the Finance Act, 2021 with effect from 1st April, 2021 and as the said **Section 147** was not even mentioned in the impugned Explanations, the reassessment notices relating to any Assessment Year issued under Section 148 after 31st March, 2021 had to comply with the substituted Sections.

It was clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; however, the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021. The Court was of the opinion that Section 3(1) of Relaxation Act empowered the Government/Executive to extend only the time limits and it did not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act did not give power to Government to extend the erstwhile Sections 147 to 151 beyond 31st March, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated 3 1st March, 2021 and 27th April, 2021 were not conditional legislation and were beyond the power delegated to the Government as well as ultra vires the parent statute i.e. the Relaxation Act.

Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 were declared to be ultra vires the Relaxation Act, 2020 and therefore, bad in law and null and void.

Consequently, the impugned reassessment notices issued under Section 148 of the Income Tax Act, 1961 were ordered to be quashed and the present writ petitions were allowed. If the law permits the respondents/revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioners have a grievance, they shall be at liberty to take their remedies in accordance with law.

2. **Where assessee-medical charitable trust was denied registration under section 12A on ground that assessee's prime intent was only to pursue medical research, in view of fact that assessee was not only established for medical research but rather for various other charitable aims and objects viz. establishing professional colleges, hospitals, health promotion facilities like health club, yoga and meditation facilities etc., impugned denial of registration under section 12A merely by relying upon only selective aim and object of assessee was unjustified**

[1] **Mon Mohan Kohli vs ACIT (High Court of Delhi) [2021]**

In the instant case[2], the assessee-medical charitable trust was established for medical research along with various other charitable aims and objects, viz., establishing professional colleges, hospitals, health promotion facilities like health club, nature club facilities, yoga and meditation facilities, entertaining facilities and community centre/religious centers. An application was filed seeking registration under section 12A and for approval u/s 80G of the Act had been rejected by ld. CIT(E) on the ground that the prime intent of the applicant is to pursue only medical research which was not covered under the term 'education'.

The assessee's application for registration was rejected on the ground that the prime intent of the assessee was to pursue only medical research which was not covered under the term 'education'.

Aggrieved, the applicant filed an appeal before the Tribunal.

On examining the aims and objects of the applicant-trust, it was held that the trust was not only established for medical research rather for various other charitable aims and objects.

Declining the registration on the ground that medical research to be carried out in the hospital of settler-company would convert the charitable activities into commercial activities was mere surmises, hence not sustainable in the eyes of law.

Sub-section (3) of section 12AA empowers the Commissioner (Exemptions) to cancel the registration of the trust if activities of trust are not in consonance with its charitable aims and objects enshrined in the Constitution. Thus, in the given case, denying registration under section 12AA was unjustified.

3. ITAT has no powers u/s 254(2) to recall its earlier order

In the instant case[3], the Assessee entered into Supply Contract dated 15-6-2004 with Ericsson A.B. Assessee filed an application under section 195(2) of the Act before the Assessing Officer, to make payment to the non-resident company for purchase of software without TDS. It was contended by the Assessee that it was for the purchase of software and Ericsson A.B. had no permanent establishment in India and in terms of the DTAA between India and Sweden & USA, the amount paid is not taxable in India.

A detailed order was passed by the ITAT when it passed an order on 6-9-2013, by which the ITAT held in favor of the Revenue. Therefore, the said order could not have been recalled by the Appellate Tribunal in exercise of powers under section 254(2) of the Act. If the Assessee was of the opinion that the order passed by the ITAT was erroneous, either on facts or in law, in that case, the only remedy available to the Assessee was to prefer the appeal before the High Court, which as such was already filed by the Assessee before the High Court, which the Assessee withdrew after the order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013. Therefore, as such, the order passed by the ITAT recalling its earlier order dated 6-9-2013 which had been passed in exercise of powers

[2] **Artemis Education & Research Foundation vs CIT (Chandigarh) [132 taxmann.com 277] [2021]**

[3] **CIT (Mumbai) vs Reliance Telecom Ltd (Supreme Court of India) [2021]**

under section 254(2) of the Act is beyond the scope and ambit of the powers of the Appellate Tribunal conferred under section 254 (2) of the Act. Therefore, the order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013 was unsustainable, which ought to have been set aside by the High Court.

In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court as well as the common order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013 deserved to be quashed and set aside and were accordingly quashed and set aside. The original orders passed by the ITAT dated 6-9-2013 passed in the respective appeals preferred by the Revenue were hereby restored.

4. Where TDS has been deducted by employer of assessee, it will always been open for department to recover same from said employer and credit of same could not have been denied to assessee

In the instant case[4], the petitioner-assessee, a pilot by profession and an employee of 'K' Airlines, filed his return of income for the assessment years 2009-10 and 2011-12 and claimed the TDS of Rs. 7,20,100/- and Rs. 8,70,757/- respectively as the tax paid in advance. TDS was deducted in case of assessee by the airlines, however, since amount was not deposited by the Airlines in the Central Government Account, the credit when claimed by the assessee was not given by the Assessing Officer and the demand was raised with interest.

Rectification applications under section 154 were filed by the assessee for cancellation of demand. These were ignored and recovery notice was issued to assessee by respondent Income-tax Department. The Assessee, aggrieved, preferred a writ petition.

Relying on the decision of the Gauhati High Court rendered in case of Asstt. CIT v. Om Prakash Gattani [2001] 117 Taxman 549/[2000] 242 ITR 638, the same was allowed by the court holding that the petitioner-assessee (deductee) was entitled to credit of the tax deducted at source with respect to amount of TDS for which Form No. 16A issued by the employer (deductor) was produced and consequently department was directed to give credit of tax deducted at source to the petitioner-assessee - deductee to the extent Form No. 16 A issued by the deductor. Consequently, the impugned demand notice was quashed and set aside.

However, if the department was of the opinion that the said amount of tax deducted at source had not been deposited by the deductor, the department was always allowed to recover the same from the deductor. Thus, it was held that benefit of tax deducted at source by the employer of the petitioner during the relevant financial years could not be denied by the Department. Credit of such tax would be given to the petitioner for the respective years. If there had been any recovery or adjustment out of the refunds of the later years, the same shall be returned to the petitioner with statutory interest.

[4] **Kartik Vijaysinh Sonavane v. Deputy Commissioner of Income-tax, Circle-8 (High Court Of Gujarat) [2021]**