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Tax Digest

- Recent case laws

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Direct Tax Updates

NEWS FEED

- *CBDT issues clarifications on applicability of Sec. 10(10D) exemption on sum received from ULIPs*

1. Reassessment notices issued on or after 1-4-2021 should be within the new 3 years time-limit & should comply with the procedure in new section 148A even if it pertained to past assessment years.

In the instant case[1], the petitioner, aggrieved by the issuance of impugned notices under Section 148 of the Income Tax Act, 1961 on the ground that the same are barred by limitation and the respondent Income Tax Authority concerned, before issuing the impugned notices under Section 148 of the Income Tax Act, had not observed the statutory formalities under Section 148 A of the Income Tax Act as prescribed by the Finance Act, 2021 which were applicable with effect from 1st April, 2021 before issuance of notices under Section 148 of the Act on or after 1st April, 2021 filed a writ before the High Court.

Agreeing with the reasonings and views taken by the Division Bench of the Allahabad High Court in the matter of Ashok Kumar Agarwal –vs- Union of India, the writ petitions were disposed off by allowing the same. Keeping in view the aforesaid conclusions, 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 are therefore bad in law and null and void.

All the impugned notices under Section 148 of the Income Tax Act were quashed with liberty to the Assessing Officers concerned to initiate fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by Finance Act, 2021 and after making compliance of the formalities as required by the law.

[1] Manoj Jain vs Union Of India (High Court of Calcutta) [2022]

2. Where assessee sold several flats during year and pursuant to search, a letter addressed to one DS showed that DS paid Rs. 57.73 lakhs towards purchase of flat, whereas agreement value with reference to same was Rs. 49.18 lakhs and Assessing Officer multiplied difference in sale price to number of flats sold and made additions under section 69A, Tribunal having accepted assessee's explanation that initially said flat was negotiated for a sum of Rs. 59.34 lakhs, however, later booking was cancelled and thereafter it was sold at Rs. 49.18 lakhs to DS, entire additions having been made by Assessing Officer without enquiry on hypothetical basis, Tribunal had not committed any perversity or applied incorrect principles to given facts to set aside additions so made

In the instant case[2], in a CD found during a survey and search in the office premises of respondent, a letter in respect of sale transaction with one Mr. Devendra Singh Tomar was found. According to the Assessing Officer, the letter showed that the sale price payable by Devendra Singh Tomar was Rs.57,73,000/- towards the purchase of flat, whereas the agreement value with reference to the same was Rs.49,18,000/-. The Assessing Officer called upon respondent to show cause as to why the difference in the sale price of Rs.8,55,000/- should not be added to the total income of respondent and further, why the same proportion should not be adopted for the other flats sold during the year 2008-2009. During that year, the respondent had sold many other flats.

[2] Principal Commissioner of Income tax v. Nexus Builders & Developers Pvt Ltd (High Court of Bombay) [2022]

The respondent showed cause and explained why the difference should not be added, but his contentions were rejected and the Assessing Officer simply multiplied this figure of Rs.8,55,000/- to the number of flats sold and added a sum of Rs.3,05,89,980/- under section 69A of the Income-tax Act, 1961 as disallowance on account of undisclosed money.

Aggrieved, he preferred an appeal before Commissioner of Income-tax (Appeal) [CIT (A)], who dismissed the appeal but reduced the undisclosed income to Rs.2,97,34,980/-. Aggrieved by this order, respondent preferred an appeal before the Income-tax Appellate Tribunal (ITAT).

The explanation given by the respondent stated that initially the said flat, of which the letter was found, was negotiated and sold for a sum of Rs.59,34,000/- to one Mr. Milind Bhingare and the party had made a token payment of Rs. 1 lakh. The booking was cancelled on certain ground and Rs. 1 lakh was returned to Mr. Milind Bhingare. Thereafter, Mr. Devendra Singh Tomar approached respondent and negotiated to purchase the flat at Rs.49,18,000/- which was paid in three instalments. This explanation was accepted by the ITAT and thus it was concluded that the appeal was devoid of merits and it was dismissed with no order as to costs.

3. Where Assessing Officer sought to reopen assessment in case of assessee on ground that one of partners of assessee firm was an HUF and according to Assessing Officer, an HUF could not become a partner of a firm, hence, interest paid to partners could not be considered for deduction, however, it was found that assessee had filed Form No. 3CD in which HUF was shown as a partner with 10 per cent profit sharing ratio and it also indicated that a certain sum had been paid as interest to HUF and these materials were available before Assessing Officer who passed original assessment order, hence, reopening of assessment being a clear case of change of opinion was not justified

In the instant case[3], the assessee filed its return of income on for AY 2014-2015 declaring total income of 'Rs.NIL'. The case was selected for limited scrutiny under Computer Aided Scrutiny Selection (CASS) and the assessment was completed determining the assessed income at 'Rs.NIL'.

On 26-3-2019, petitioner received a notice under section 148 of the Act stating that there were reasons to believe that Petitioner's income chargeable to tax for AY 2014-2015 had escaped assessment within the meaning of section 147 of the Act. The reasons for reopening were provided. Since reopening of the assessment was proposed within the period of 4 years, the proviso to section 147 was not applicable. At the same time, the Assessing Officer could not reopen an assessment within a period of 4 years merely on the basis of change of opinion. The Assessing Officer had no power to review an assessment which has been concluded unless he had tangible material to come to the conclusion that there was an escapement of income from assessment. But in the reasons to believe in the present case, even a single ground could not be found which could be considered to be tangible basis for reopening the assessment. The Assessing Officer stated that from the partnership deed, audited accounts and Form No. 3CD report, it was seen that the Assessee had 15 partners, one of

[3] S.A. Developers. vs ACIT (High Court of Bombay) [2022]

whom was Dhansukh Nanda HUF. According to the Assessing Officer, an HUF cannot become a partner of a firm or enter into a contract with other person and hence the Assessee had not complied with the provisions of section 184 of the Act and the interest of Rs. 61,50,664/- paid to partners could not be considered for deduction.

The assessee sought assessment as a firm. Dhansukh Nanda HUF had always been a partner through its karta in all these deeds. Therefore, under section 184(3) it is mandatory for the Assessing Officer to assess the assessee's firm as a firm only in all subsequent assessment years.

This being a clear case of change of opinion because Petitioner had filed Form No. 3CD in which Dhansukh Nanda HUF was shown as a partner with 10% profit sharing ratio. Form No. 3CD also indicated that a sum of Rs. 1,65,554/- had been paid as interest to Dhansukh Nanda HUF. These materials were on the face of a document available before the Assessing Officer who passed the original Assessing Order. It was concluded that it was nothing but a change of opinion. Thus, the petition was disposed off.

4. Where the Tribunal had passed a detailed order originally during appellate proceedings holding that payment made by assessee-company for purchase of software was in nature of royalty and TDS was to be deducted at rate of 10 per cent on such payment, said order could not be completely recalled by Tribunal in exercise of powers under section 254(2) as powers under section 254(2) were only to rectify/correct any mistake apparent from record

In the instant case[4], the assessee-company entered into a supply contract with a non-resident company. It filed an application under section 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of software without deducting tax at source. The assessee contended that said non-resident company had no Permanent Establishment (PE) in India and in terms of the DTAA between India and Sweden & USA, no tax was to be deducted in India on same. The Assessing Officer rejected the assessee's application on grounds that consideration for software licensing constituted royalty under section 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 10 per cent on said royalty payment.

The assessee filed a miscellaneous application for rectification under section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

The High Court passed an order, dismissing the writ petitions by observing that (i) the revenue itself had in detail gone into merits of the case before the Tribunal and the parties filed detailed submissions based on which the Tribunal passed its order recalling its earlier order; (ii) the revenue had not contended that the Tribunal had become functus officio after delivering its original order and that if it had to relook/revisit the order, it must be for limited purpose as permitted by section 254(2); and (iii) that the merits might have been decided erroneously but Tribunal had the jurisdiction and within its powers it

[4] Commissioner of Income-tax vs Reliance Telecom Ltd. (SUPREME COURT OF India) [2021]

may pass an erroneous order and that such objections had not been raised before Tribunal.

None of the aforesaid grounds were tenable in law. Merely because the revenue might have in detail gone into the merits of the case before the Tribunal and merely because the parties might have filed detailed submissions, it did not confer jurisdiction upon the Tribunal to pass the order u/s section 254(2). The powers under section 254(2) were only to correct and/or rectify the mistake apparent from the record and not beyond that.

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 Tribunal recalling its earlier order deserved to be quashed and set aside and were accordingly quashed and set aside.