A.C. Bhuteria & Co.
Chartered Accountants

**2, India Exchange Place,
2nd Floor, Room No 10,
Kolkata – 700001**

Ph: 033-22306990/ 40032841
Email id: info@acbhuteria.com

Tax Digest

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GOVT. NOTIFIES INTEREST RATES FOR SMALL SAVING SCHEMES FOR 4TH QUARTER; RATES ON FDS HIKED BY 1.10%:

THE RATES OF INTEREST ON VARIOUS SMALL SAVINGS SCHEMES FOR THE FOURTH QUARTER OF THE FY 2022-23 STARTING FROM 1ST JANUARY, 2023 AND ENDING ON 31ST MARCH, 2023 HAVE BEEN REVISED.

SOURCE: OFFICE MEMORANDUM F.NO. 1/4/2019-NS, DATED 30-12-2022(CIRCULARS AND NOTIFICATIONS)

Direct Tax Updates

1. Vivad se Vishwas Act, 2020

Interest from Refund arising @ 5% was to be paid along with refund for delay beyond 90 days

In the instant case[1], the assessee had settled under the Vivad se Vishwas Act, 2020 and the department consequently issued Form - 5 in April 2021 settling the taxes refundable towards the full and final settlement of tax arrears. Refund of Rs. 16.01 crores for A.Y. 10-11 and Rs. 1.17 crores for A.Y. 11-12 was determined. Legal heir of the assessee filed a writ petition seeking refund along with interest. Refund was paid in February, 2022 during the pendency of the writ.

Before the Court, the assessee contended that payment of interest was a kind of compensation for use and retention of money collected unauthorizedly by the Department. Reliance was placed on the Hon'ble Supreme Court's decision in ***Union of India v. Tata Chemicals Ltd (2014) 6 SCC 335.***

Au Contrarie, the Revenue contested that no interest was payable on refunds issued under the Vivad se Vishwas Act, 2020. Moreover, there was delay since the deceased had two PANs, and the process required deactivation of one PAN. Also, no objection affidavit of the surviving legal heir was not furnished before the period of 6 months of delay and there was a technical issue at the CPC and hence, the refund could not b issued on time.

The Hon'ble Delhi High Court was of the view that refund was a debt owed to the assessee and there was no provision in the Vivad se Vishwas Act, 2020 prohibiting interest on refund. The issue regarding the two PANs had already been pre-resolved by one of the Division Benches of the Court. The affidavit was sought on August 31, and was furnished on the next day by the assessee. The technical issue could not endure to the benefit of the Revenue.

It held that interest was liable to be paid since the Department received the money, retained it, and used it - just like any other individual would have to make the party good, interest was liable to be paid. The obligation to refund money received and retained without right implies and carries with it the right to interest.

Hence, the delay beyond 90 days was subject to interest and the amount was directed to be paid on 8 weeks.

2. Section 148A:

Section 143(1) was "intimation" not "assessment"

In the instant case[2], the assessee received a show cause notice to reopen assessment for A.Y. 18-19 on the ground that the certain professional received by Batliboi & Associates LLP were not offered to tax. The assessee filed a detailed objection while pointing out that the certain service was not chargeable to tax in India as per Article 15 of the Tax Treaty and the said position was accepted by the Department for A.Y. 19-20. However, an order on erroneous footing was passed by the Department that the assessee had not filed any response against the show-cause notice. Accordingly, the order was passed against the assessee.

The order was challenged before the Court, which set apart the order of the Revenue by directing it to pass a fresh reasoned order after considering the reply of the assessee. The order was again passed against the assessee considering the same a fit

[1] **Mrs Anjul vs. PCIT (High Court, Delhi) [2022]**

[2] **Ernst and Young U.S. LLP v. Assistant Commissioner of Income tax (Delhi High Court) [2022]**

reason for reopening. This order was now challenged under writ jurisdiction.

Before the Hon'ble Court, the assessee contended that in the absence of fresh and tangible material which indicated that income had escaped assessment, no order could be made. The stance was also accepted in the order u/s 143(1) of the Act. It was further argued that this assessment was one with various consequences. Moreover, the Department on its own had accepted similar claim in A.Y. 19-20. Thus, only under significant factual differences and on the basis of concrete material could the Department take an opposing view.

Per Contra, the Department contended that the services granted In both the assessment years would have to be identical to avail the benefit in the tax treaty.

The Court held that there is a distinction between "intimation" and "assessment". No opinion was formed in the order u/s 143(1). The doctrine of change in opinion does not apply to it. It further held that A.Y. 19-20 did not offer any assistance as the assessee did not place any documents on record under which transactions were carried out to show whether the transactions were similar or identical. The Court thus dismissed the petition.

3. Section 148A:

Reassessment cannot be made on grounds which were thoroughly examined by AO during original assessment

In the instant case[3], a petition under Article 226 of the Constitution of India was filed challenging the notice dated 13.03.2018 issued under section 148 of the Act.

The petitioner is private limited company and is engaged in business of construction and engineering. It received a notice under section 148 of the Act requiring the petitioner to file a return within 30 days from service of the said notice.

It was submitted that all the reasons recorded in writing for issuance of the notice under section 148 of the Act for the Assessment Year 2011-2012 for reassessment were discussed in length during the course of assessment proceedings under section 143(3) of the Act and the petitioner had submitted detailed replies during such assessment proceeding and the Assessing Officer after being satisfied and after application of mind had passed the assessment order under section 143(3) of the Act without making any addition. Therefore, issuance of notice for reopening is nothing but a change of opinion by the Assessing Officer which is not permissible as per the provisions of the Act.

The petitioner had during the course of assessment proceedings ,through its reply, produced a list of investments yielding tax free income as well as details regarding investment in mutual funds which is taken as tax free income under section 14A along with details of investment in mutual fund and shares and other investment. The Petitioner had also pointed out details of Mutual Funds, opening balance, purchases and sales made as well as closing balance of outstanding amount of investment in mutual fund shares and other investments. It was held that to confer jurisdiction to the Assessing Officer to reopen assessment under section 147 beyond four years from end of relevant assessment year, two conditions must be satisfied, that Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment, and that same was occasioned on account of either failure on part of assessee to make a return of his income for that assessment year or to disclose fully and truly all material facts necessary for that assessment year.

[3] **P C Snehal Engineers (P.) Ltd v. ACIT (Gujarat High Court) [2022]**

Issue of section 14A was very much there before Assessing Officer during assessment proceedings and Assessing Officer made no addition on account of disallowance under section 14A. Therefore, it could not be said that assessee had failed to make true and full disclosure of material facts necessary for assessment. Hence, reopening of assessment was not justified.

4. Section 54B :

Jurisdictional High Courts views were bound to be followed by the authorities acting under it – contrary views of other High Courts could not be followed.

In the instant case[4], the Assessee sold an agricultural land and purchased another another agricultural land in the name of her sons, thereby claiming deduction u/s 54B of the Act.

During the course of scrutiny, the AO observed that the land was not bought in her own name, and hence denied the deduction.

Aggrieved, the assessee preferred an appeal before the CIT(A) with no benefit. Hence, the assessee preferred an appeal before the ITAT.

The ITAT held that once a jurisdictional High Court has taken a view that the assessee is not entitled to claim a deduction u/s 54F/54 when the investment was made in the name of the relative, it requires to be followed by the authorities acting under the jurisdiction of such High Court. A contrary view of other High Courts could not be followed. The appeal was hence dismissed.

[4] **Vandana Pathare v. ITO (ITAT Pune) [2022]**