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Tax Digest

- Recent case laws

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CBDT extends deadline to comply with Sec. 54 to 54GB provisions considering the then-prevailing COVID-19 :

The CBDT has granted a further extension of timelines to comply with provisions of section 54 to 54GB. In view of the then-prevailing COVID-19 pandemic and resultant restrictions imposed, the CBDT has said that the compliances to be made by the taxpayers such as investment, deposit, etc. to claim an exemption under Section 54 to 54GB for which the last date of such compliance falls between 01-04-2021 to 28-02-2022 (both days inclusive), such compliance may be completed on or before 31-03-2023.

Direct Tax Updates

1. Section 147/148:

No reassessment can be made merely relying upon information received from the office of DCIT

In the instant case[1], based upon information received from DCIT, Central Circle-2(2), Mumbai about three accommodation entries of Rs. 70 Lakh each credited in the assessee's account, the AO came to a conclusion that such transaction was not a genuine transaction, and assessment was sought to be reopened for verification of facts as to whether amount of Rs. 2.1 crore received by assessee and reflected in regular books of accounts pertained to any accommodation entry or not.

The assessee raised objections against the reasons for reopening provided. The objections were rejected by the AO, and hence the assessee filed a petition before the Court. During the proceedings, the assessee disclosed all relevant facts necessary for assessment which included details of bank statement and even bank interest income from Saving bank account and therefore, all requisite details were disclosed which facts were necessary for assessment. The assessee also contended that there was no basis for reopening the assessment and under circumstances, it could not be said that Assessing Officer had any tangible material to form an opinion that income chargeable to tax had escaped assessment. Therefore, it appeared that under guise of reopening assessment, the AO just wanted to have a roving inquiry which was not justified.

The Hon'ble Court held that in the absence of any tangible material to form an opinion that income chargeable to tax had escaped assessment and in absence of any satisfaction recorded by Assessing Officer by merely relying upon information received from Office of DCIT Central Circle 2(2), Mumbai, impugned action of reopening assessment while exercising power under section 148 could not be sustained.

[1] Vijay Ramanlal Sanghvi vs. ACIT (High Court, Gujarat) [2022]

2. Section 148A:

Provision towards warranty and replacement exp. made by 'Prestige' based on its past experience to be allowed: HC

In the instant case[2], the Assessee-company was engaged in business of sale of pressure cookers, cookware and kitchen home appliances. During the year under consideration, the assessee had exported customer designed pressure cookers and kitchenware to UK for first time, and hence it being new in the market, expected higher warranty claims. It thus made a provision for warranty at rate of 1 per cent of sale value of goods sold in UK market. The AO disallowed the said provision.

However, on appeal, the Commissioner (Appeals) allowed the provision towards warranty made by the assessee.

On further appeal, the Tribunal set-aside the order passed by the Commissioner (Appeals) and held that the Commissioner (Appeals) had allowed provision towards warranty expenses without considering the past events in its business related to incurrence of such expenses.

On the assessee's appeal to the Hon'ble High Court, it was noted that the Commissioner (Appeals) had recorded factual aspect that assessee had incurred warranty expenses for claims during relevant financial years and said claims were discharged for subsequent years at a higher price. Thus, claims received against goods for relevant assessment year

[2] TTK Prestige Ltd v. Deputy Commissioner of Income tax (Karnataka High Court) [2022]

were in excess of provision made. Further, unless these products exported by the assessee carry warranty, particularly when product was an imported one, customers would not chose to purchase such products. The assessee had made provision of 1 per cent of sales value towards warranty and replacement expenses based on its past experience, in its business. Thus, on facts, the impugned provision made towards warranty expenses by assessee was to be allowed.

3. ITAT's landmark decision comes down heavily on ordering of special audits u/s 142(2A) only to get extension of time for passing assessment order

ITAT criticizes AO for ordering special audit just to get an extension of time to pass assessment order

In the instant case[3], the assessee raised an additional ground before the Tribunal the appointment of special auditor u/s. 142(2A) deserves to be declared illegal since the said appointment was without examination of books of accounts and also without providing reasonable opportunity of being heard to the appellant accordingly the assessment deserves to be quashed having been passed beyond the limitation period prescribed u/s 153. Since the appointment of Special auditor u/s 142(2A) is illegal, therefore the period for assessment could not have been extended. The Tribunal admitted the additional ground and held that where the appointment of a special auditor under 142(2A) of the Act was without examination of books of accounts and also without providing reasonable opportunity of being heard to the appellant, the said reference was held to be illegal. Consequently, there was no extension of time period for assessment. Hence the assessment was held to be made beyond the period of limitation.

Extended limitation period u/s 153A for passing assessment order available for special audit cases is not available where special audit ordered u/s 142(2A) is found to be bad in law as it was ordered without examining accounts and forming opinion as to complexity of accounts and in violation of natural justice. As such, assessment order passed in extended limitation period is to be held as barred by limitation.

The ITAT observed and held that it is pertinent to mention here that as per the provisions of section 142(2A) as in force during the relevant period, it was only the nature and complexity of the accounts, for which the matter could be referred by the AO to the special auditor. The Ld. DR, in this case, could not rebut the aforesaid contentions of the Ld. AR of the assessee that the AO even did not look to the accounts at all before forming the opinion that the same were complex. Even the assessee was not given opportunity to object to the said action, which was statutorily required, as discussed above. The service of notice was defective and rather, no service in the eyes of law. The case being based on search conducted u/s 132, the assessment of block period of AYs 2001-02 to 2007-08 was conducted simultaneously by the AO. In the assessment proceedings for AYs 2001-02 to 2005-06, there is no allegation of non-compliance on the assessee and all notices were duly served. However, it was only qua the notices issued u/s 142(2A) for appointment of special auditor for AYs 2006- 07 & 2007-08 that the service was shown to be effected by way of substituted mode of service i.e. by affixture. Hence there was violation of the principles of natural justice.

Even the Commissioner, while granting approval did not look into any material at all and it was only the show cause notice that was produced before him. In view of this, it is apparent from the record that the

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[3] Rajiv Kumar v. ACIT (ITAT Chandigarh) [2022]

Special Audit referred for these cases was merely to get extension of time to frame assessment, hence, the said assessment has to be held as barred by limitation.

Hence, in view of the above discussion and considering the relevant aspects that the reference by the AO to special auditor being bereft of plausible reasons for holding about the complexity of accounts and forming such opinion even without examining such accounts and the principals of natural justice being violated, the assessee being given no proper opportunity to object to such reference and even mechanical approval by the CIT, therefore, in the light of the legal proposition laid down by the Hon'ble Supreme Court in the case of Sahara India (Firm) v. CIT, we hold that the order appointing Special Auditor u/s 142(2A) of the Act passed by the AO as bad in law.

Since the extended period was taken by the AO under the guise of Special audit, hence the same cannot be counted for computing the period of limitation to pass the assessment order. As held by the Hon'ble Supreme Court in the case of 'Harsha Dhingra v. State of Haryana', the subordinate Forums including this Tribunal is bound to apply law declared by the Hon'ble Supreme Court and is duty bound to apply such dictum to case which would arise in future.

4. Section 47(xiiib) :

No violation of Sec. 47(xiiib) if partner's capital is credited with goodwill recorded by LLP post-conversion: ITAT

In the instant case[4], the present appeal is filed by the Revenue against the order passed by the ld. Commissioner of Income Tax (Appeals) for A.Y. 2016-17.

Briefly the facts of the case are that the assessee is a Limited Liablity Partnership [in short, "LLP"] e ngaged in construction activities. The assessee LLP filed its return of income on 10.10.2016 declaring total income of Rs. NIL. The case was selected for scrutiny and statutory notices under the Income Tax Act, 1961 [in short, "the Act"] were issued and complied. In the assessment completed, the Assessing Officer made an addition of Rs. 48,35,00,000/- u/s 45 of the Act under the head "Capital Gains" for violation of conditions u/s. 47(xiiib) of the Act on conversion of company into the assessee LLP.

Aggrieved by the said addition, the assessee preferred appeal before the ld. CIT(A) who allowed the appeal in favour of the assessee by deleting the said addition. Aggrieved by the order of the ld. CIT(A), the Revenue preferred an appeal.

It was observed and held that exemption u/s 47(xiiib) can't be withdrawn on introduction of goodwill with credit to current accounts of partners of LLP on admission of new partner post conversion of private company into LLP. Such introduction of goodwill in books of LLP post-conversion by credit to partners' current accounts does not amount to receipt by the shareholders of "any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership" as the status as shareholder exists till the existence of company i.e till the conversion. On and from the date of conversion, the partners of LLP can no longer be regarded as shareholders. Thus, there is no violation of clause (c) of the proviso below section 47(xiiib).

Clause (f) of the section 47(xiiib) lays down that no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date

4 ITO v. Brizeal Realtors and Developers LLP (ITAT Mumbai) [2022]

of conversion for a period of three vears from the date of conversion. This clause uses the terms 'the partner of LLP' and 'accumulated profits standing in the accounts of the company on the date of conversion'. It is seen that accumulated profits are negative (Rs.1,46,535) in the company before the date of conversion. The same amount of negative balance is appearing in the LLP as on the date of conversion. It is noticed from the records that no amount was or indirectly to any partners of the LLP as on the date of conversion.