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Tax Digest

- Recent case laws

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Direct Tax Updates

- *CBDT excludes cases getting time-barred on 31-03-22 from the Faceless Assessment regime*

The CBDT has notified another exclusion to cases where Assessment Order not to be passed under faceless assessment regime. The Board has notified that cases pending with Jurisdictional Assessing Officer as on 15-3-2022 or thereafter, for which the time limit for completion expires on 31-03-2022, shall be out of the purview of faceless assessment under section 144B if such cases cannot be completed within limitation period due to technical or procedural constraints.

1. Section-37(1) "Business Expenditure":

Where the assessee had incurred expenditure for giving valuable gifts to certain parties and claimed it as sales promotion expenditure, shown bills and vouchers for purchases and all details had been maintained scientifically, it could not be disallowed on ad hoc basis.

In the instant case[1], the assessee had debited a sum towards sales promotion expenses and had claimed the same in profit and loss account. On scrutiny, ld.AO found that the assessee had given costly gifts to certain parties and disallowed the entire amount pertaining to gifts out of the total claim made by the assessee on the ground that the assessee failed to give list of persons to whom such valuable gifts had been made for business promotion.

Aggrieved the assesse preferred an appeal before the ld.CIT(A) who partly confirmed the disallowance made by the AO. Aggrieved by the decision of ld CIT(A), the Revenue filed an appeal before the Tribunal in response of which, a cross-objection was filed by the assesse.

The assessee argued that the nature of business in which it deals, requires frequent maintenance services & replacement of spare parts and because of high competition in the area, it was essential to incur expenditure on sales promotion in order to remain in the market and also to maintain its hold in the market. The assessee further contended that the expenditure incurred was just 1.14% of the total turnover achieved by it during the year. Thus, the expenditure in consideration could not be said to be excessive or unreasonable.

The Hon'ble Tribunal observed and held that the assessee had incurred similar expenditure in earlier years also which were allowed then. Non-disclosure of personal details of recipients of gifts was a matter of maintaining secrecy of its line of business and nothing else. Also, it had shown bills and vouchers for the purchases and all the details have been maintained scientifically. The assessee is a well-organized business house whose affairs had been managed in a very professional manner. The Tribunal held that disallowance could only have been made in this case, if there were some lapses in the details maintained by the assessee. The Hon'ble Tribunal did not find any reason to disallow the said expenditure and thus, deleted the same.

2. Section-271E "Penalty":

Where the transaction u/s 269SS and 269T were done under business exigencies, and done in an open manner where no unaccounted money was involved, disallowance under the said section was uncalled for.

In the instant case[2], AO had issued a show cause notice u/s 271E of the Income Tax Act to the assessee to provide an explanation towards repayment of loans to lenders in cash exceeding the amount as prescribed u/s 269T of the Income Tax Act. After giving an opportunity of being heard to the assessee and not being satisfied with the reply received, the AO imposed a penalty of the equal amount u/s 271E of the Act on the assessee.

[1] **Assistant Commissioner of Income Tax v. Armee Infotech (ITAT Ahmedabad) [2022]**

[2] **Alipurduar Tea Co. Ltd Vs Assistant Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]**

Aggrieved the assessee preferred an appeal before the Ld. CIT(A) against the order of penalty which was dismissed on the ground that repayment of loans in cash could not be done and the cash could have been replaced by banking channels.

Aggrieved by the order of ld. CIT(A), the assessee went for an appeal before the Tribunal wherein it submitted that the repayment had been made at the insistence of the group companies facing the urgent need of cash at their end and no unaccounted money had been routed through to make the repayments. Moreover, all the transactions between sister concerns, taking place in open manner, did not constitute loan repayments in cash and therefore, there was no violation of section 269T of the Act as these transactions were done at the insistence of lending group companies and same had not been done at the discretion of the appellant.

After hearing the rival submissions, the Hon'ble Tribunal was of the view that the said transactions were between group companies and were entered into out of business exigencies and done in an open manner, where no unaccounted money was involved. The transactions among sister concerns were held to be out of the purview of section 269SS of the Act in view of decision of Hon'ble Madras High Court in the case of CIT vs Idhayam Publication Ltd. (2006) 285 ITR 221(Mad.). Further, the said transactions were on current accounts operated between the sister concerns and were not in the nature of unsecured loans. Therefore, the Tribunal held that the said transactions between assessee and lending group of company(s) did not fall within the ambit of section 269SS and 269T of the Act. Accordingly, the order of CIT(A) was set aside and the AO was directed to delete the penalty. In the conclusion, the appeal of the assessee was allowed.

3. Section-143(2) "Scrutiny Assessment" & 142(1) "Inquiry Notice before assessment of tax":

Where the assessee is engaged in the business of growing, manufacturing and sale of tea, it can treat nursery expenditure as revenue expenditure only if it is incurred for raising a nursery wherein plants are being utilized for the purpose of re-plantation without any expansion of the plantation area.

In the instant case[3], the assessee is a company engaged in the business of growing, manufacturing and sale of tea. The assessee had claimed for nursery expenses shown in its P& L Account. The AO disallowed the expenditure incurred for nursery by treating it as capital expenditure. The AO was of the view that in case of assessee, nursery expense was related to the initial budding of tea which gave advantage to it for a number of years and hence, the said expense could not be treated as revenue expenditure. Considering the nature of expenditure and the decision of the Hon'ble Calcutta High Court in the Tasati Tea Company case, the AO disallowed the said expenditure. Furthermore, appeal to the ld. CIT(A) did not bring any relief to the assessee.

Aggrieved by the decisions of AO and ld CIT(A), the assessee preferred an appeal before the Tribunal which after hearing contentions of both the parties, held that if expenditure is incurred by a Tea Company for raising a nursery wherein plants could be utilized for the purpose of re-plantation without any expansion of the plantation area, then expenditure incurred on such an activity will be a revenue expenditure. But if the nursery is being

[3] **Dholai Tea Co. Limited Vs Deputy Commissioner of Income Tax, Kolkata (ITAT Kolkata) [2022]**

raised and plants are developed for expansion of the plantation to an additional area, then such expenditure would be treated as a capital expenditure. This aspect has not been looked into by the ld. AO while disallowing the claim of the assessee. Therefore, assessee's file was restored to the ld. Assessing Officer for above reason and thus, assessee's appeal was allowed for statistical purposes.

4. Section-10AA "Deduction for SEZ Units":

Under Section-10AA, a business unit set up in a Special Economic Zone is eligible for claiming deduction of 100% of profits and gains derived from exports for a period of five consecutive assessment years after commencement of business.

In the instant case[4], the assessee company had set up a manufacturing unit in a Special Economic Zone(SEZ). The said unit was eligible for exemption u/s 10AA of the Income Tax Act @ 100% of profits and gains derived from exports for a period of five consecutive assessment years beginning with the assessment year relevant to previous year in which it had commenced manufacturing.

In the present case, the said unit had commenced manufacturing on 1.5.2012 relevant to assessment year 2013-14. During the instant year i.e. AY 2016-17, the assessee had derived profits from business and profession and had claimed exemption u/s-10AA of the Act in respect of profit derived from exports. However due to inbuilt e-filing system of IT portal, the assessee was not able to first avail of the exemption u/s 10AA of the Act as the system adjusted the brought forward business losses automatically against the eligible business profits resulting into the exemption u/s 10AA of the Act. The assessee immediately informed the ITO explaining the entire scenario which deprived the assessee from claiming the exemption u/s 10AA of the Act. The assessee did not get any reply from the AO and in the meantime, the revised return was processed u/s 143(1) of the Act wherein the assessee did not get actual claim of exemption u/s 10AA of the Act due to the said automatic adjustment of brought forward losses from earlier years.

The assessee challenged the intimation passed u/s 143(1) of the Act before the Ld. CIT(A) by filing an appeal but with a delay of 187 days. The assessee moved a condonation petition before the Ld. CIT(A) for condoning the delay and admitting the appeal for adjudication. The Ld. CIT(A) however dismissed the appeal of the assessee on the ground that the said intimation was sent through e-mail and the appeal should have been filed on or before the due date.

Aggrieved assessee went for an appeal before the Tribunal which after hearing the rival submissions was of the view that the assessee was undisputedly entitled to exemption u/s 10AA of the Act equal to profits and gains derived from exports for a period of five consecutive assessment years beginning with the A.Y. 2013-14 in which manufacturing was commenced by it. The assessee was not able to claim the exemption due to in-built e-filing portal of the department and thus, the authorities were under duty to allow the exemption to the assessee u/s 10AA of the Act as the assessee had fulfilled all the conditions as envisaged u/s 10AA of the Act in the very first assessment year. The claim of the assessee should not be rejected based on

[4] **M/s IFGL Refractories Ltd. Vs Deputy Commissioner of Income Tax, Banagalore (ITAT Kolkata) [2022]**

technicalities. The assessee had not filed the appeal before the Ld. CIT(A) within the due time which was explained with reasons but CIT(A) going into the technicalities of the things dismissed the appeal as barred by limitation. The hon'ble Tribunal set aside the order of CIT(A) in this regard.

Furthermore, the hon'ble Tribunal held that the assessee was eligible for exemption u/s 10AA of the Act and for claiming such exemption, income must first be computed for that unit alone by allowing exemption u/s 10AA of the Act which means that the exemption u/s 10AA of the Act must precede any other adjustment of brought forward losses. Accordingly, the AO was directed to allow the exemption u/s 10AA of the Act to the assessee from its business profits and accordingly, the issue was restored to the file of the AO for the purpose of limited verification of the amount of exemption u/s 10AA of the Act.

In the result, assessee's appeal was allowed for statistical purposes.