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Tax Digest

- Recent case laws

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Direct Tax Updates

NEWS FEED

- *CBDT issues refunds of over Rs. 1,83,579 crore to more than 2.09 crore taxpayers from 1st Apr,2021 to 28th Feb,2022. Income tax refunds of Rs. 65,938 crore have been issued in 2,07,27,503 cases &corporate tax refunds of Rs. 1,17,641 crore have been issued in 2,30,566 cases*

1. Section 37(1)-"Deduction":

Expenditure incurred in distribution of freebies to medical practitioners would not be allowed as a deduction in terms of Explanation 1 to section 37(1)

In the instant case[1], the assesse, a pharmaceutical company incurred expenditure towards gifting freebies to medical practitioners for promoting its health supplement and claimed exemption for said expenses under section 37(1), in response to which, AO by placing reliance on Circular No. 05/2012, dated 1-8-2012 and the circular issued by the Medical Council of India (MCI) under the Medical Council (Professional Conducts, Etiquettes and Ethics) Regulation Act, 2002 published on 14-12-2009, held that only expenses incurred till 14-12-2009 would be eligible for deduction. He thus, partially disallowed exemption claimed by the assessee on the expenses incurred in distribution of freebies which on appeal was upheld consecutively by the CIT(A), the Tribunal and the High Court.

Aggrieved, the assessee went for appeal to the Supreme Court wherein it was argued by the assessee that the amended 2002 Regulations were not applicable to it as the pharmaceutical companies were not bound by them. While medical practitioners were expressly prohibited from accepting freebies, no corresponding prohibition in the form of any binding norm was imposed on the pharmaceutical companies gifting them. In the absence of any express prohibition by law, it could not be denied the benefit of seeking exclusion of the expenditure incurred on supply of such freebies under section 37(1). Furthermore, it was submitted that the CBDT circular dated 1-8-2012 enlarged the scope of the 2002 Regulations, and made it operable beyond medical practitioners, i.e., to pharmaceutical companies and allied health sector industries, which, in the absence of any enabling provision, was outside its dominion. So, if the CBDT circular had to be brought into effect, it could be done so only 'prospectively', and not 'retrospectively'. Reliance was placed on various decisions of this Court to show that beneficial circulars had to be applied retrospectively; however oppressive circulars could only be applied prospectively.

Whereas the Revenue submitted that while the act of pharmaceutical companies gifting freebies to medical practitioners for promotion of their products may not be classified as an 'offence' under any statue, it was squarely covered within the scope of Explanation 1 to section 37(1) by use of the words "prohibited by law", as it was specifically prohibited by the amended 2002 Regulations. While the assessee could not be 'punished', it should not be allowed to benefit by claiming a tax exemption on the freebies distributed.

After hearing both the parties and relying on the High Court decision in the case of CIT v. Kap Scan & Diagnostic Centre (P.) Ltd. [2012], the Hon'ble Supreme Court held the pharmaceutical companies' gifting freebies to doctors as "prohibited by law", and not allowed to be claimed as a deduction under section 37(1). Doing so would wholly undermine public policy. As a result, the appeal was dismissed without order on costs.

[1] Apex Laboratories (P.) Ltd. Vs Deputy Commissioner of Income-tax (Supreme Court) [2022]

2. Section 2(14), read with section 45- "Capital Asset"

Right to receive compensation/damages for release of right to sue on account of breach of contract for sale of land is not a capital asset and thus not chargeable to tax as capital gains.

In the instant case[2], the assessee had entered into registered agreements to purchase certain agricultural land parcels with original landowners. In consideration thereof, the assessee had paid various amounts to the original landowners as agreed. However, it was learnt by the assessee thereafter that the original landowners had also sold land parcels in question to someone else. In consequence of dispute arising towards rightful ownership of land parcels, the original landowners, original purchasers and assessee company went through various levels of litigations before Tribunals, wherein claim of the original purchasers to title and ownership with rightful possession of the disputed land was upheld. Assessee further carried the dispute by filing Special Civil Application seeking its claim on land parcels. Pending settlement of ongoing dispute in the Court of law, both the original purchasers and assessee-company referred the matter for arbitration to resolve the disputes regarding rightful ownership outside the Court. The arbitrator eventually passed an arbitration award in pursuance whereof, the original purchasers sold the disputed land and out of such sale proceeds, a sum of Rs. 70 crores were apportioned to the assessee in consonance with arbitration award. Furthermore, a simultaneous direction was given to the parties to withdraw the civil suit.

The AO in the course of the assessment proceedings brought the compensation for relinquishment for right to sue as long term capital gains chargeable to tax under the normal provisions of the Act and also for increase in the book profit for the purposes of deeming provision of section 115JB. Aggrieved, the assessee went for an appeal to the CIT (A). On appeal, the CIT (A) came to the conclusion that the compensation so received was neither chargeable under the normal provision of the Act nor includible for the purposes of determination of book profit under section 115JB.

On appeal by revenue and cross objections by assesse before the Tribunal, It was held that the compensation received by the assessee on transfer of the land parcels against release of its right to sue was capital in nature outside the scope and ambit of section 2(14) and consequently, do not fall outside the sweep of chargeability under section 45.

The revenue argued that CIT(A) ought to have treated the receipts as 'income from other sources' in response to which no substantive argument was placed before Court. Furthermore, the AO himself had treated the compensation to be capital in nature and had brought the same to tax under the head 'capital gains'. The predominant condition, among others, for chargeability of income under the head 'income from other sources' is that such income must generate on revenue account. The case sought to be built by the revenue, as an alternate, was completely contrary to its stated position.

Thus, the Tribunal was of the view that there was no error in the conclusion drawn by the CIT(A) in favour of the assessee under the normal provisions of the Act for excluding impugned capital receipts from

[2] Income Tax Officer Vs Ganeshsagar Infrastructure (P.) Ltd. (ITAT Ahmedabad) [2021]

ambit of taxation. Hence, revenue's appeal was dismissed.

3. Reassessment Notice will be quashed if issued for the reason that it is 'likely' that assessee might have claimed incorrect deduction

In the instant case[3], the petitioner was registered as a banking company with the Reserve Bank of India ('RBI') and was engaged in the business of banking. Being a scheduled bank and having branches in rural areas, it was entitled to deduction under section 36(1) (viia) of the Actfor bad and doubtful debts equivalent to 7½ % of the total income and 10% of the aggregate average advances made by the rural branches. It was also entitled to deduction under section 36(1)(vii) of bad debts which was written off as irrecoverable in the accounts of the petitioner for the previous year. However, in computing the deduction under section 36(1)(vii), the bad debts which were written off as irrecoverable was required to be reduced to the extent of the provision of bad and doubtful debt which was allowed to the petitioner under clause (viia), in an earlier assessment year.

The AO proceeded with the assessment and sought clarification, to which the assessee submitted a point wise detailed reply. The AO, satisfied with the same passed order u/s 143(3) of the Act allowing the claim.

On 18th February 2011, the jurisdictional Assessing Offcer issued a notice under section 148 of the Act, 1961 proposing to reopen the assessment. The Assessing Offcer was of the view that there was failure to take into account the enhanced deduction under section 36(1)(viia) while allowing the deduction towards bad debts in assessment year 2006-07, and, thus, he had reason to believe that income of Rs.25,73,25,815/- had escaped assessment for assessment year 2006-07.

The Hon'ble Court observed that –

• Where the assessee-bank had placed all the relevant facts before the AO and deduction under section 36(1)(viia) was allowed upon consideration of the explanation furnished by the assessee, the re-opening for reason that it was 'likely' that the assessee might have claimed incorrect deduction in the past assessment years is in the nature of a 'guess' hazarded by the AO without any tangible material.

• The reasons recorded by AO show non-satisfaction of the jurisdictional condition that AO has reason to believe income has escaped assessment due to failure of assessee to make full and true disclosure of material facts.

• The expression 'reason to believe' is not equivalent to a 'hunch' or 'guess'.

• If the jurisdictional condition for invoking the power under section 147 is not satisfied for a particular assessment year, the notice for re-opening cannot be sustained even if the assessee did not assail the notice for re-opening in respect of preceding or succeeding years.

Hence, the notice u/s 148 was quashed.

4. CIT cannot invoke section 263 on a matter considered by CIT(A) especially when

[3] HDFC Bank Vs ACIT (High Court of Bombay) [2022]

CIT(A) has directed AO to make additions on it

In the instant case[4], the ld. PCIT sought to revise the order passed by the ld. AO u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said re-assessment proceedings, the ld. AO had not even made any addition despite the fact that he had reason to believe that income of Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the ld. AO was ultimately not added by the ld. AO in the re-assessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio. Reliance in this regard was rightly placed on the decision of the Hon‟ble Jurisdictional High Court in the case of Jet Airways reported in 331 ITR 236. When an assessment framed by the ld. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the ld. PCIT u/s.263 of the Act deserves to be quashed.

[4] Aishwarya Rai Bachchan Vs PCIT (ITAT Bombay) [2022]