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Tax Digest

- Recent case laws

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- ***CBDT inserted new rule (12AC) for filing Updated return of income:***

The return of income to be furnished by any person, eligible to file such return under the sub-section (8A) of section 139, relating to the assessment year commencing on the 1st day of April, 2020 and subsequent assessment years, shall be in the Form ITR-U and be verified Electronically under digital signature or under electronic verification code.

Direct Tax Updates

1. Section-263 "Revision of orders prejudicial to Revenue":

Commissioner was justified to revise erroneous order passed by AO and make addition to assessee's income under Section 263

In the instant case[1], the assessee had challenged the notice issued to it by Principal CIT (PCIT) under Section 263 of the Income Tax Act, 1961 proposing to set aside the assessment made by AO under Section 143(3) of the Act which was erroneous and prejudicial to the interest of the revenue.

Facts of the case revolves around the applicability of Section 45(2) of the Act, when a capital asset is converted into stock-in-trade, it is deemed as transfer of capital asset and capital gains on such transfer is chargeable to tax in the year in which such stock in trade is sold or otherwise transferred. Assesse engaged in the business of construction and infrastructure activity, converted capital asset (land) into stock-in-trade during the FY 2013-14 and sold a part of stock-in-trade during the FY 2014-15, assesse is liable for capital gains on conversion of capital assets to stock in trade in AY 2015-16 to the tune of Rs. 5.37 crore. The case was taken up for scrutiny and assessment was completed under Section 143(3) of the Act by the AO without any addition to the returned income of the assessee.

Thereafter, PCIT issued notice under Section 263 of the Act, and directed the AO to pass fresh assessment order after taking into consideration – i) computing capital gains on conversion of capital asset into stock in trade in AY 2015-16 i.e. in the relevant AY when stock in trade is sold, ii) computing business income on sale of stock in trade.

Aggrieved by PCIT's order, the assessee went for an appeal before the Tribunal, and claimed that it has offered the sale proceeds as business income and thus it has not offered the same under capital gain mainly because the entire stock in trade in not sold and it has incurred a loss on part sale of land in the AY 2015-16. It further contented that, Section 263 has been wrongly invoked by the PCIT as the order under Section 143(3) is not prejudicial to the Revenue nor the same is erroneous.

After hearing both the parties and going through the records, the Hon'ble Tribunal was of the view that under Section 45(2) the capital gain arising on conversion of Capital asset into Stock in trade shall be chargeable to tax in the year of conversion in the hands of assessee. The fair market value on the date of conversion shall be deemed to be full value of consideration as a result of transfer of capital asset and will be taxable in the year of sale of stock in trade. Section 45(2) does not cover a situation where converted stock in trade is partly sold, but the intention of the legislature was not to make the Revenue authorities wait till the entire stock in trade is sold. So, capital gain will be partially taxable as part of land sold during the relevant financial period.

As a result, the Hon'ble Tribunal held that no inquiry has been conducted by the AO during the assessment proceedings in this regard, and PCIT assumed valid jurisdiction to review the assessment order under Section 263. Order of PCIT was confirmed and appeal of the assesse was dismissed.

2. Section-149 "Time limit for (issuance of) notice":

For time-barring of digitally issued reassessment notices, date on which they were issued by email sent is important and not the date of receipt by assessee

[1] **Kyori Infrastructure Pvt. Ltd Vs. DCIT (ITAT, Hyderabad) [2022]**

In the instant case[2], the assessee had challenged the notice issued to it by the Assessing Officer (AO) under Section 148 of the Income Tax Act, 1961 before the Hon'ble High Court.

Speaking of the facts of the case, notice under Section 148 had been issued on 31.03.2021 at 6:42pm vide email for the AY 2013-14 but was served on 01.04.2021 at 2am. Assessee contented that the notice under consideration is time-barred as it is served after the 6 years' time limit as stipulated by the old pre-amended provision of Section 148.

Hon'ble High Court held that main consideration was about finding the date of issuance of notice under Section 148. Section 149 provides time limit for issuance of the notice under Section 148.

Section 282 deals with service of notice generally, service of notice/summon/order or any other communication shall be made by delivering or transmitting a copy – by post, in electronic form or by other means. Section 282A deals with authentication of notice – i) notice or other document issued under the Act shall be signed by the respective authority, ii) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon (either on the mail body or attachment thereon).

Hon'ble High Court held that the assesse has raised issue about the receipt of notice on 01.04.2021 without giving much attention that the requirement of the provisions is for issue of notice and not of the receipt. The notice shows the name and office of the income tax authority printed on the attachment to the email with a digital signature on 31.03.2021. It relied upon the judgment supplied by the assessee i.e., Daujee Abhushan Bhandar P Ltd v. Union of India & Ors (High Court of Allahabad). While discussing the issue, the Division Bench of the Allahabad High Court has referred to Rule 127A of the Income Tax Rules, 1962 which deals with communication in the electronic form and after referring to Section 13 of the Information Technology Act, 2000, it was held that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. Therefore, if a notice is digitally signed by the income tax authority and it is entered by the income tax authority in computer resource outside the control, then that point of time would be the time of issuance of the notice.

Applying the facts of the case and above judgment Hon'ble High Court passed the judgment in favor of Department and granting assessee the remedy for further appeal as per law.

3. Section-263 "Revision of orders prejudicial to Revenue":

Issuance of SCN on the ground that AO had failed to examine and no enquiry was conducted into veracity of loans however assumption of jurisdiction by Principal Commissioner without conducting an independent enquiry and on same material which was noted by Assessing Officer in reassessment proceeding was not justified.

[2] **Malavika Enterprises Vs. Central Board of Direct Taxes (High Court of Madras) [2022]**

In the instant case[3], assessment was reopened under Section 147 by the AO for the AY 2009-10 for enquiry against loans (cash credits) where it was found that all such loans were genuine and relief was granted to assessee. Thereafter, Principal CIT (PCIT) proposed to revise reassessment order by issuing show-cause notice under Section 263 on the ground that Assessing Officer had failed to examine and that no enquiry was conducted into veracity of loans during the assessment.

Aggrieved, the assessee went for an appeal before Tribunal wherein it was found that, reasons recorded for reopening of the assessment and the reason for initiating proceedings under Section 263 are the same and based on the same material. The allegation in the SCN issued under Section 263 is that the AO has failed to examine and that no enquiry was conducted into the veracity of the loans by the AO, is factually incorrect. It is well settled that inadequate enquiry cannot be a ground for exercising of revisionary power under Section 263. It is for the AO to determine the extent of enquiry and investigation to be done on a particular issue. From the record it is clear that the AO had conducted enquiries both with the assessee as well as with the third parties and on receipt of all the information has accepted these loans as genuine. The Ld. PCIT cannot substitute his opinion for that of the AO. It is also seen that the Ld. PCIT has not conducted any verification or prima facie investigation on his own to come to a conclusion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue.

Furthermore, the Hon'ble High Court observed that, Tribunal rightly took note of the law laid down by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT [2000] and allowed the appeal filed by the assessee. In the said decision the Hon'ble Supreme Court pointed out that the phrase "prejudicial to the interest of revenue" occurring in Section 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Further every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the revenue. It is settled legal principle that the PCIT cannot substitute its opinion to that of the AO on the same material which was noted by the AO in the reassessment proceeding.

The Hon'ble High Court upheld the order passed by the Tribunal and added that the Tribunal has rightly granted relief to the assessee.

4. Section-28 "Profit and gains of business or profession":

Interest from Fixed deposits (FD) made for business purposes and for getting tender shall be treated as Business income.

In the instant case[4], the assessee had made fixed deposits (FD's) with banks to obtain the bank guarantees from time to time which was in close connection to the business requirements. Such FD's were made by utilizing the cash credit limit on which interest is paid to the bank and which forms part of the business expenditure. Assessee claimed such interest income to be part of business income and offered it to tax under the head – profit or gains for business or profession.
The AO assessed the same as income from other sources as it was income earned from the fixed deposits.

[3] **PCIT Vs. Anindita Steels Ltd. (High Court of Calcutta) [2022]**

[4] **R. G. Colonizers Pvt. Ltd. Vs CIT(A) (ITAT, Jaipur) [2022]**

Aggrieved by AO's order, assesse preferred an appeal before the Ld. CIT (A) which confirmed the additions made by AO and dismissed the appeal file by assesse.

Aggrieved the assessee went for an appeal before the Hon'ble Tribunal which after going through the records available inferred that assesse has made FD's out of lent funds on which it has also paid interest to the bank just to carry on his business smoothly. It also held that interest income earned on FD's is part of business income as FD's were made for the purpose of business for giving bank guarantees to the awarder of contract. The income would have been taxable under the head income from other sources if the FD's would have been made out of sufficient own funds, but that is not the case under consideration.

The Tribunal, while ruling in favour of the assessee relied on the decision in Mehru Electricals & Engg. Pvt. Ltd. wherein the Tribunal has held that "the FD's were made for providing bank guarantee to the Electricity Board. Apparently, the interest on FD's is directly connected with the industrial undertaking. Even the assessee's argument of netting of interest income is accepted. The FD's were made for business purposes and for getting the tender from the Electricity Board and income from interest is directly connected with the industrial undertaking."