A.C. BHUTERIA & Co.
CHARTERED ACCOUNTANTS

16, STRAND ROAD
DIAMOND HERITAGE, ROOM 703
KOLKATA – 700001

PH: 033-46002382/ 40042183
EMAIL: INFO@ACBHUTERIA.COM

www.acbhuteria.com

Direct Tax Newsletter

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NEWS FEED

- **CBDT Notifies Form 6D for Furnishing of 'Inventory Valuation Report' Under Section 142(2A) :** *Notification No. 82/2023, dated 27-09-2023*
- **CBDT Amends Rule 11UA Incorporating New Valuation Methods | Includes Norms for Valuing "CC Preference Shares" :** *Notification No. 81 /2023, dated 25-09-2023*
- **CBDT Notifies Procedure for Filing Form 13 for Lower/Nil TDS Certificate When Payer Details are Unavailable :** *Notification No.02/2023, dated 27-09-2023*

1. Sec. 264 Revision Allowable for Genuine ITR Mistakes Even if Assessee Claiming Change in All Figures

In the instant case[1], the Assessee, an individual, mistakenly filled income details for Assessment year 2014-15 in return of income for the assessment year 2013-2014. Assessing Officer (AO) issued a demand based on this incorrect information. Subsequently, assessee filed his return of income for assessment year 2014-15 showing correct income. Assessee applied for revision under section 264, which was rejected by the CIT. Aggrieved-assessee filed writ petition before the Bombay High Court. The Bombay High Court held that CIT rejected assessee's application because according to him, the assessee had sought a revision on some fact which was indisputably apparent from record.He accepted that the assessee was claiming change in all the figures duly filled in by him in his verified ITR. This included changes to deductions, tax credits, gross total income, and its breakdown by income category. CIT held that the determination of income of any assessee is an exercise which involves deep scrutiny and cannot be merely substituted by acceptance of the income figure claimed by the assessee.

The Court held that the power conferred under Section 264 is very wide, and the Commissioner is duty-bound to apply his mind to the application filed by the assessee and pass such order thereon. Section 264 also empowers him to call for record of any proceedings under the Act in which any order has been passed and make such inquiry or cause such inquiry to be made and pass such order as he thinks fit.

In the instant case, assessee made mistakes while filing ITR. It was not a deliberate mistake or an attempt to gain some unfair advantage or to evade any tax. Thus, assessee's application was to be disposed of on merits.

2. AO Can't Issue Notice in Name of a Non-existing Amalgamating Co. Merely Because its PAN is Active

In the instant case[2], Delta Power Solutions India Pvt. Ltd (DPS) and assessee-Delta Electronics India Pvt. Ltd. (DIN) proposed a scheme for amalgamation dated 01-04-2018. DPS was the amalgamating company, and DIN was the amalgamated company.

The National Company Law Tribunal (NCLT) approved the amalgamation processes on 31-01-2019. The proposed scheme of amalgamation was also informed to the revenue by a communication dated 08-08-2018. Post approval by the NCLT, the AO was further informed by a communication dated 15.02.2020. However, AO issued a notice under section 148A against amalgamating Co. specifying that its PAN was active. Later, an order under section 148A(d) was passed, reopening the assessment of the amalgamating company. Assessee filed writ petition before the High Court against such reopening of assessment.

The High Court held that the NCLT sanctioned the scheme of amalgamation, and the assessee duly informed AO about it. In Para 13 of the judgment of the NCLT, observation has been made with regard

[1] **Diwaker Tripathi v. PCIT - [2023] (High Court of Bombay) [2023]**

[2] **Delta Electronics India (P.) Ltd. v. PCIT - [2023] (Uttarakhand High Court)**

to the submissions that AO made in the amalgamation proceedings.

Mere activation of PAN number may not give a right to the revenue to issue notice to a non-existent entity. In the instant case, the notice was given to the amalgamating company, which was a non-existent entity, after the appointed date, i.e. 01.04.2018.

Admittedly, the order under Section 148A(d) was passed by AO against a non-existent entity. Therefore, the order was bad in the eyes of the law.

3. AO Rightly Imposed Penalty Under Black Money Act for Non-disclosure of Foreign Assets in Schedule FA of ITR

In the instant case[3], the assessee and her husband have made a joint investment in Global Dynamic Opportunity Fund Ltd. Assessee's share in the said investment was 40%. The assessee invested out of funds transferred from India to HSBC Bank in Jersey.

Assessee declared interest income from the foreign investment in AY 2016-17. Said asset was sold, and capital gain was offered to tax in AY 2019-20. However, the assessee didn't disclose foreign assets while filing the return of income (ITR) for AY 2016-17 to AY 2018-19 under schedule FA.

Assessing Officer (AO) levied penalty towards the non-disclosure under section 43 of the Black Money Act 2015 (BMA) for each of the assessment years. On appeal, the CIT(A) upheld the levy of penalty. The aggrieved assessee filed the instant appeal before the Tribunal.

The Mumbai Tribunal held that section 43 of the BMA contains provisions for the levy of penalty for failure to furnish information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India in ITR.

As per said section, a resident and ordinarily resident person is liable for a penalty if he fails to furnish or files inaccurate particulars of investment outside India while filing the return of income under section 139. The disclosure of foreign investments/assets is to be made in ITR Schedule FA.

It is apparent from the language of section 43 that the disclosure requirement is not only for the undisclosed asset but any asset held by the assessee as a beneficial owner or otherwise. Undisputedly, the assessee had not disclosed the foreign asset in the return of income – Schedule FA. Thus, the penalty was rightly levied upon the assessee.

The assessee contended that the levy of penalty is not mandatory but is at the discretion of the AO since the word used in the section is that the AO "may" levy penalty.

It was held that even if it is assumed that in the light of the expression "may" used in section 43 of BMA, the AO has the discretion to levy penalty. The assessee failed to substantiate that the AO has exercised his discretion extravagantly.

After examining the facts of the case, AO formed his opinion to levy penalty. He exercised his discretion judiciously. No material was brought to show that AO levied penalty arbitrarily and unjustifiedly.

Further, the provisions of section 43 do not provide any room not to levy penalty even if the foreign asset is disclosed in books since the penalty is levied

[3] **Ms. Shobha Harish Thawani v. JCIT - [2023] (Mumbai-Trib.)**

only towards non-disclosure of foreign assets in schedule FA.

4. FA 2021 Amendment Disallowing Sec. 80P Claim on Non-filing of ITR isn't Applicable for AY Prior to 2021-22

In the instant case[4], the assessee, a co-operative society, filed its return of income for the assessment year 2019-20 on 28-11-2020, declaring total income of certain amount and claiming deduction under section 80P. The extended due date for filing the original return of income for the relevant assessment year was 31-8-2019.

An intimation order was passed under section 143(1)(a) making adjustment in returned income by not granting deduction claimed in the return of income under section 80P as the assessee did not file the return within the due date prescribed under section 139(1).

On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer (AO), and the matter reached the Rajkot Tribunal.

The Tribunal held that section 143(1)(a)(v) provides that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading 'C.— Deductions in respect of certain incomes' (which includes deduction under section 80P), can be made if the return is furnished beyond the due date specified under sub-section (1) of section 139. This amendment has been introduced with effect from 1-4-2021.

This amendment was introduced in section 143(1)(a)(v) with effect from 1-4-2021 and does not apply to the impugned assessment year, i.e. the assessment year 2019-20 relevant to the financial year 2018-19.

Accordingly, denial of a claim under section 80P would not come within the purview of prima facie adjustment under section 143(1)(a)(v), for the simple reason that the section was not in force during the period under consideration, i.e. the assessment year 2019-20.

[4] **Chakargadh Seva Sahakari Mandali Ltd. v. Deputy Commissioner of Income-tax (CPC) - [2023] (Rajkot-Trib.)**