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Tax Digest

- **Recent case laws**

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CBDT notifies forms for A.Y. 24-25:

New Form-1 (Aircraft Leasing business), Form -1 {Dividend exempt u/s 10(34B)}, Form-1 (Ship Leasing Business), Form-10IEA, Form-10IFA & Form-3AF are released.

Refer Notification 65/2022 for Form 1 (Aircraft Leasing Business), Notification 52/2023 for Form 1 {Dividend exempt u/s 10(34B)}, Notification 57/2023 for Form 1 (Ship Leasing Business)Notification 43/2023 for Form 10-IEA, Notification 83/2023 for Form 10-IFA & Notification 54/2023 for Form 3AF.

1. Supreme Court Upholds ICAI's Limit of 60 Tax Audits Per CA | Makes It Effective From 01.04.2024

In the instant case[1], the petitioners, who were Chartered Accountants, challenged the validity of Clause 6 of Guidelines No.1- CA(7)/02/2008 dated 08.08.2008 issued by the Institute of Chartered Accountants of India (ICAI) under powers conferred by the Chartered Accountants Act, 1949 (Act) on the ground that the same is illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India.

The petitioners challenged the mandatory ceiling on the number of tax audits a Chartered Accountant can accept under Section 44AB of the Income Tax Act, 1961, as per Clause 6.0, Chapter VI of the Guidelines. They also seek to quash the disciplinary proceedings initiated by the Institute in line with these guidelines.

The Apex Court held that the Council of the ICAI had the legal competence to frame the Guideline restricting the number of tax audits a Chartered Accountant could carry out. The Court held that the ICAI was established to regulate the profession of chartered accountants, ensuring that the profession in the country maintains high professional ethics and renders quality service.

The power of the Council to regulate the profession of Chartered Accountants is not only in the interest of the Chartered Accountants but also in the interest of the public at large. As the Parliament may not always be able to amend the Schedules to the Act to incorporate newer professional misconducts, the Parliament has delegated the power to the Council to make any regulation or Guideline, the breach of which would amount to misconduct. Therefore, the regulation or Guideline issued by the Council, the breach of which would result in professional misconduct, being a part of clause 1 of Part II of the Second Schedule, must be read as part and parcel of the Act itself.

Accordingly, the Council of the Institute had the legal competence to frame the Guideline restricting the number of tax audits that a Chartered Accountant could carry out, which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year.

Further, the restriction on the number of tax audits that could be undertaken by practicing Chartered Accountants doesn't violate the right to practice the profession by a Chartered Accountant. It is a reasonable restriction and is protected under Article 19(6) of the Constitution. The Court observed that the power to control and impose taxes is a cornerstone of State sovereignty.

The restriction imposed by the ICAI on the number of tax audits that can be undertaken by a Chartered Accountant is not violative of Article 19(1)(g) of the Constitution. The restriction was imposed by the ICAI after taking into account the letter of CBDT and the CAG Report No. 32/2014. The restriction was imposed to eliminate the possibility of conducting tax audits in an insincere, unethical or unprofessional manner. The restriction was also supported by concerns and suggestions shared by experts and practitioners over a span of thirty years. It was imposed as the best conceivable and practical measure to rectify the targeted mischief and ensure the quality of tax audits conducted by the Chartered Accountants, which is in the general public's interest.

The idea of compulsory tax audits was neither an inherent part of the practice of a Chartered Accountant nor an essential function that could be claimed as a fundamental right under Article 19(1)(g). As carrying out compulsory tax audit under Section 44AB of the Income Tax Act,1961 is a 'privilege' & not a 'right' of a CA, the limit of 60 tax

1 Shaji Poulose vs. Institute Of Chartered Accountants Of India - [2024] (SC)

audits imposed by ICAI on every CA is to be upheld as it does not curtail the fundamental right of a CA to practice his profession.

If the Parliament, in its wisdom, at a certain future date, due to technological developments or any other reason, finds that expeditious and accurate assessments can be ensured without imposing on assessees the burden of additional requirements of the tax audit report and thereby deletes Section 44AB from the IT Act, 1961, it could not be possibly argued that the right under Article 19(1)(g) has been abridged.

Accordingly, the Court concluded that the limit of the maximum number of tax audits is valid and is not violative of Article 19(1)(g) of the Constitution as it is a reasonable restriction on the right to practise the profession by a Chartered Accountant and is protected or justifiable under Article 19(6) of the Constitution. However, the Guidelines dated 08.08.2008 and its subsequent amendment are deemed not to be effective until 01-04-2024.

2. HC Grants Relief to PepsiCo India | Follows Sony Ericsson Ruling to Reject Bright Line Test to Benchmark AMP Exp.

In the instant case[2], the Assessee (PepsiCo India) was set up in India as a subsidiary of PepsiCo Inc., a US-based company. It was involved in manufacturing soft drink/juice-based concentrates for aerated and non-aerated drinks in India. The assessee obtained a license from its US parent AE for the technology to manufacture the concentrates and to use and exploit the brands owned by its AE.
In the Transfer Pricing (TP) proceedings, the Transfer Pricing Officer (TPO) held that the assessee had incurred a huge advertising, marketing and promotional (AMP) expenditure to promote its brand and trademark. He treated the AMP expenses as an international transaction and made adjustments to the AMP expenses. The matter reached the Delhi Tribunal.

The Delhi High Court has confirmed the Tribunal's decision to grant relief to PepsiCo India regarding the Transfer Pricing adjustment related to advertising, marketing, and promotional (AMP) expenses.

The High Court ruled that the calculation of AMP expenses using the Bright Line Test (BLT) is not viable, considering the judgment in Sony Ericsson Mobile Communications India (P) Ltd. v. CIT [2015] 55 taxmann.com 240 (Delhi).

The Tribunal relies upon the Delhi High Court ruling in the case of Sony Ericsson Mobile Communications India (P.) Ltd. (Supra) held the TPO could not quantify the adjustment by determining the AMP expenses spent by the assessee after applying the Bright Line Test (BLT) to hold it to be excessive, thereby evidencing the existence of the international transaction involving the AE.

It was held in the Sony Ericsson case that the bright line test has no statutory mandate, and it is not obligatory to subject AMP expenses to a bright line test and consider non-routine AMP as a separate transaction.

3. Mere Mentioning of Assessee's Name in Panchnama of Another Co. Doesn't Authorize AO to Issue Notice u/s 153A

In the instant case[3], the Assessee was a company engaged in real estate development. A search and seizure operation was conducted against another

[2] PCIT v. PepsiCo India Holding (P.) Ltd. - [2024] (Delhi)

[3] Misty Meadows Private Limited vs. Union of India - [2024] (Punjab & Haryana) [2024]

person under section 132 of the Income Tax Act. While preparing the panchnama for the search operation, the assessee's name was also added, and the Assessing Officer (AO) issued a notice under section 153A. Subsequently, AO concluded the assessment and raised a demand.
Aggrieved by the order, the assessee filed a writ petition before the Punjab & Haryana High Court.

The High Court held that the panchnama would be a document that has to be prepared recording articles, material and objects that may be seized as incriminating documents when searching premises. Mentioning any company's name in the panchnama would only reflect that documents relating to that company were found during the search at the premises. A panchnama, therefore, cannot be treated to mean authorization issued to the authorities under Section 132 of the Act.

If any incriminating articles/documents/objects or any material relating to the assessee was recovered during the search of premises, which is found to be sufficient for reassessment by the AO, he was required to follow the procedure laid down under Section 153C.

In the instant case, the panchnama prepared at the office of another person only reflects the name of the assessee. Since it cannot be concluded that there was authorization to conduct a search against assessee under Section 132., the proceedings initiated under Section 153A, including the notice issued to the assessee, were held to be unjustified and without jurisdiction.

4. No Additions Invoking Sec. 69B if Exp. Was Held Disallowable u/s 40A(3) & Not for Unexplained Exp.

In the instant case[4], the assessee was engaged in the manufacturing of fabrics and readymade garments. A survey action under section 133A was conducted at the business premises of the assessee wherein the assessee surrendered an amount on account of excess stock over and above its normal business income, discrepancy in cost of building and on account of disallowance under section 40A(3).
Subsequently, the assessee filed its return of income by declaring total income, including the surrendered income. The Assessing Officer (AO) contended that the surrendered income on account of cash expenditure was chargeable under section 69B and to be taxed as per the provisions of section 115BBE.

Aggrieved by the order, the assessee preferred an appeal to the CIT(A). The CIT(A) confirmed the AO's additions, and the matter reached the Amritsar Tribunal.

The Tribunal held that there was no finding that cash expenditure had been found and that it had not been accounted for. In such a situation, it was not understood as to how the deeming provisions can be invoked.

Where the expenditure has been held disallowable in terms of section 40A(3), which means that certain expenditure has been incurred, accounted for in books of accounts and is incurred in cash in violation of section 40A(3), the question of unexplained expenditure or unaccounted expenditure doesn't arise for consideration.

Hence, the action of the AO in invoking the deeming provisions in this regard was to be set aside.

[4] Gurinder Makkar vs DCIT - [2024] (Chandigarh-Trib.)