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Tax Digest

- Recent case laws

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RBI Launches PRAVAAH Portal for Streamlined Regulatory Approvals and Clearances

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RBI has introduced three major initiatives: the PRAVAAH portal, the Retail Direct Mobile App, and a FinTech Repository. The PRAVAAH portal will make it convenient for any individual or entity to apply online for various regulatory approvals and enhance the efficiency of various processes related to the granting of regulatory approvals and clearances.

1. HC Directs Assessee to File Refund Application Manually if There Was No Option to File Supplementary Refund Claim

In the instant case¹, the petitioner was a registered person under the provisions of the Central Goods and Services Tax Act, 2017. The petitioner was involved in the manufacture and export of goods. The petitioner filed a refund application under the accumulated ITC category. On realization of an arithmetical error on the part of the petitioner, the petitioner filed another refund application of the differential amount under the category 'any other' as supplementary application for the refund of the differential amount cannot be filed on the portal under the same category. Therefore, there was no option for the petitioner to submit the application under the category 'any other'.

The refund claim was denied by the authorities stating that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner. Aggrieved by the order, the petitioner filed a writ petition before the Rajasthan High Court.

The High Court observed that the petitioner was legally entitled to the refund of a sum, but it erroneously lodged claims for a lower amount due to inadvertent arithmetical error of the employee of the petitioner. The High Court held that the claim of the petitioner cannot be rejected without examining the same by the respondent authority on its own merits and in accordance with the law. The High Court allowed the petitioner to furnish the refund applications manually for the differential amount.

2. Share Application Money is Neither Loan Nor Deposit | Provisions of Sec. 26gSS and 26gT Not Attracted

In the instant case², during the relevant assessment year, the assessee-company received share application money for preference shares amounting to Rs.20,000 or more from persons otherwise than by an account payee cheque or by account payee bank draft. The Assessing Officer (AO) issued a show cause notice for penalty under section 271D/271E on the ground that the assessee had violated the provisions of section 26gSS.

On appeal, the CIT(A) upheld the penalty order. Aggrieved by the order, an appeal was filed to the Tribunal. The Tribunal deleted the penalty and the matter reached the Calcutta High Court.

The High Court held that the words 'loan or deposit' have been defined in Explanation (iii) to section 26gT, which is not an expansive definition. It provides that "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, including a loan or deposit of any nature.

In the case of a loan, it is ordinarily the debtor's duty to seek the creditor and repay the money according to the agreement. In other words, a loan grants temporary use of money or temporary accommodation on certain conditions. Thus, a loan is an act of advancing money by one person to another under an agreement by which the recipient of money agrees to repay the amount on agreed terms.

¹ Shree K R Engineering Works - [2024] (High Court of Rajasthan)

² CIT vs. Vamshi Chemicals Ltd - [2024] (High Court of Calcutta)

In case of a deposit, it is generally the duty of the depositor to go to the banker or the deposittee, as the case may be, and demand it. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf the deposit has been accepted on fulfilment of certain conditions.

Share application money is neither repayable after notice nor repayable after a period. It is for participation in the capital of the company. Therefore, neither as per the definition of the words "loan or deposit" given in Explanation (iii) to section 269T nor in the ordinary sense, share application money can be said to be a loan or deposit.

Once share application money is neither loan nor deposit, neither section 269SS nor 269T shall attract. Consequently, no penalty either under section 271D or under section 271E could be imposed.

3. ITAT Can't Recall Its Order Based on Subsequent Judgment of Supreme Court

In the instant case³, the assessee filed its return of income for the relevant assessment year. During the assessment proceedings, the Assessing Officer (AO) disallowed the deduction claimed by the assessee on account of the delay in deposits of employee's contribution towards the provident fund and ESIC. The matter was then taken to the Tribunal. The Tribunal held that the assessee had filed its return of income by the due date specified under section 139(1). Thus, the deduction claimed by the assessee regarding the delayed deposit of

employees' contributions towards the provident fund and ESIC was allowable.

The AO filed a Miscellaneous Application before the Mumbai Tribunal to recall the order passed by the Tribunal, contending that the Tribunal's order was based on the binding precedents available at that time. However, in case of *Checkmate Services P. Ltd. v. CIT* [2022] 143 taxmann.com 178 (SC), the Hon'ble Supreme Court reversed the judgment based on which the Tribunal passed the order. Thus, the order passed by the Tribunal was based on an erroneous interpretation of law.

The Mumbai Tribunal held that the Constitutional Bench of the Hon'ble Supreme Court clearly opined that the change in law or subsequent decision/judgment of a Co-ordinate Bench or a larger Bench by itself cannot be regarded as a ground of review.

Admittedly, when the judgment of the Tribunal was passed, it was based on the law binding on the Tribunal and authorities below by a series of judgments of the Hon'ble Jurisdictional High Court and other High Courts. Thus, the decision of the Tribunal was rendered before the judgment of the Hon'ble Supreme Court.

The judgment of the Hon'ble Supreme Court will apply in all the cases where the lis or cases are pending before any Court or forum. But once the issue in the appeal has attained finality following the earlier binding precedence of the jurisdictional high court and there are no lis pending, based on the subsequent judgment of a superior court, do not alter the finality of the judgment.

If the Revenue's contention is to be accepted. In that case, whenever a judgment is reversed by a higher Court or by any Constitutional Court subsequently in some different case, all the appeals

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

and matters which have been decided following the earlier order of the Constitutional Courts/High Court or Supreme Court do not mean that all such orders should be recalled even when no lis is pending and to disturb the finality.

Further, the powers under section 254(2) are akin to Order XLVII Rule 1 of CPC. While considering the application under section 254(2), the Tribunal is not required to revisit its earlier order and discuss merits. The powers under section 254(2) are only to rectify or correct any mistake apparent from the record. The Tribunal cannot revisit its order based on a subsequent judgment of a higher court.

Therefore, the Tribunal was not required to recall its order based on a subsequent judgment of the Apex Court.

4. AO Isn't Required to Pass Speaking Order for Adjustments Made in Sec. 143(1)(a) Intimation Based on Tax Audit Report

In the instant case⁴, the CPC processed the return of income filed by the assessee under section 143(1). The assessee paid certain compensation in favour of a hospital and claimed the same as expenditure. However, said compensation was remitted for violation of patents/trademarks.

Assessing Officer (AO) issued an intimation calling for tax audit report. Pursuant to this, AO noted it under clause no. 21(a) of Form 3CD, a certain amount was listed under the entry of expenditure by way of penalty of fine for violation of the law. He proposed adjustment on the ground that expenditure was not disallowed by the assessee while filing the return. Thereafter, adjustment was made under section 143(1). Assessee contended

that AO failed to pass the speaking order. The matter was reached before the Mumbai Tribunal.

The Tribunal held that the Assessing Officer (AO) considered the assessee's response for making adjustments to the return of income under various provisions of section 143(1) of the Act. Under the provisions of section 143(1) of the Act, the AO is required to compute the income after taking into consideration the adjustment as prescribed, subject to communication with the assessee.

In the instant case, the AO made an adjustment based on the entry made by the tax Auditor of the assessee under the row prescribed for expenditure by way of penalty or fine for violation of law for the time being in force. Out of the two items listed under this row in the tax audit report, the assessee already added one item to compute returned income, but the second item was omitted to include in the returned income. Based on the omission observed, the AO communicated the proposed adjustment and thereafter passed the intimation order along with the reasons for the adjustment, which was duly specified.

The Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316 (SC) had distinguished between intimation and assessment. It held that under intimation, the authority of the AO is limited to carry out adjustments based on the return of income or accompanying documents, and he can't go beyond that and make adjustments on any debatable issue. In this case, the AO was not required to pass a speaking order for adjustments made, although he has duly proposed the adjustment twice to the assessee. Afterwards, in the intimation, he provided reasons for the adjustment. Therefore, the assessee's argument that the AO was required to pass a speaking order was incorrect.

⁴ DCIT vs. ANI Integrated Services Ltd. - [2024] (Mumbai-Trib.)