Direct Tax Vista

Your weekly Direct Tax recap

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1. Every payment pursuant to a Court's decree cannot be disallowed u/s 37

It is the right of every business to protect itself from financial liability. The mere fact that the result of going to a court is negative cannot make the payment towards a decree as being in violation of a law. If such was the case, then all payments made on account of arbitration decrees would be disallowed u/s 37 of Income Tax Act being a payment apropos a violation of law. Similarly, Interest paid on any amount which is a infraction of law is not allowable as a deduction under Income Tax. However all interest paid pursuant to a Court's decree is not disallowable. Interest paid pursuant to Court decree which is not towards penalty for infraction of any law, but a purely commercial arrangement between assessee and other part under a civil suit which is filed in order to protect business interests of assessee cannot be termed as being on account of infraction of law, was held by The ITAT Ahmedabad in the case of THE DCIT, CIRCLE- 1(1)(2), VADODARA Vs M/s SAYAJI HOTELS LTD [2023-VIL-447-ITAT-AHM]

2. AOs cannot make ad-hoc additions without going into details…Assesses also cannot claim expenses without showing commercial expediency. However, AOs thereafter cannot question pure business decisions

Umpteen no. of times during assessments it is seen that AOs have made additions by disallowing purchases and the same is accepted by assesses. However, it is a good development that even SME businesses are now fighting for their rights. AOs have to now earn every bit of tax rightfully without resorting to ad-hoc deductions as New India's MSME's become more organized and have evidences and vouchers to substantiate their expenses and purchases. ITAT Kolkata has passed a judgement in the case of SANJAY TRANSPORT AGENCY Vs ACIT, CIRCLE-3(1), ASANSOL [2023-

VIL-437-ITAT-KOL] which may not be very significant as far as jurisprudence is concerned but reflects on the new business environment. In this case, In course of appellate proceedings before CIT(A), assessee had given complete details of expenditure on spare parts as well as machines purchased for purpose of carrying out contractual work. CIT(A) did not doubt genuineness of type of expenditure incurred by assessee, but sustained disallowance @20% without finding any specific defect in these details. It was held that Disallowance made by CIT(A) is merely ad hoc in nature. Sales/gross receipts are not disputed at any stage and for achieving the same, it was held that the assessee needs to incur expenditure. It was held that the AO was not justified in making additions towards bogus expenditure. CIT(A) has erred in sustaining addition by making ad hoc disallowance without specifying any defect in books of accounts and records maintained by assessee. Order passed by CIT(A) was thus set aside.

However, there is counter department's dimension also. It is important to assesses also to show business purpose and commercial expediency for every expenditure and expenses will not be allowed merely because bills are there and payment has been made by Bank Account. Expecially incase of trading firms it is seen that huge charge of business promotion expenses are there sometimes. It has to be substantiated that how these business promotion expenses actually led to or atleast was considered to lead to proportionate increase in business. It was held in the case of SRI DINESH DEVRAJ RANKA Vs THE ADDITIONAL COMMISSIONER OF INCOME TAX [2023-VIL-401-ITAT-BLR] that mere assertion that expenditure was incurred for promoting business cannot be accepted without establishing nexus between expenditure and business. However, in interest of justice, the matter was remitted back to CIT(A) to examine issue afresh based on evidences that the assessee may submit in this regard. In the same matter claim of assessee in regard to amount paid towards property advance, not supported by any documents which AO called for during assessment proceedings - not substantiated, Amount written off against salary advance - not substantiated and Claim of bad debts - not substantiated with proper documentary evidence to prove that it is incurred in regular course of business and amount could not be recovered, were all disallowed by The Hon'ble Tribunal.

However, once the business expediency is shown, and there is no related party transaction involved within meaning of Section 40A(2) of the Income Tax Act, then the ALP cannot be disputed. AO cannot step into the shoes of a businessman and interfere with the business decision of assessee. The same was held by the ITAT-Kolkata in the case of ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-11(2), KOLKATA Vs SAFAL PROPERTIES PVT LTD [2023-VIL-414-ITAT-KOL]. Here the interest charged by one party @16% instead of 10% was disputed as an exorbitant rate.

3. There is no transfer of stock-in-trade by landowner in the case of a JDA

In the case of land development agreement, the agreement in most cases is that after the construction of the housing complex on the said land, a percentage of the constructed area is allotted to the landowners and a percentage to the developer. The question which the department raises is whether there is a transfer in of right or land which is held as stock-in-trade by the landowners to the developers in this case, atleast to the extent of the developer's share, and taxable u/s 43ACA of The Income tax Act. In the case of Commissioner of Income Tax vs. Balbir Singh Maini, Hon'ble Supreme Court held that that the landowner continues to be the owner throughout the agreement and at no state purported to transfer rights akin to ownership to the developer and granted relief to the assesse.

The fact that the registering authorities also continued to treat the landowner as the owner was also taken note of and similarly it was held by The Hon'ble Calcutta High Court in the case of PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA Vs M/s EMPORIS PROPERTIES PVT LTD, KOLKATA [2023-VIL-47-CAL-DT]

4. Employers to take declarations in April 2023 from employees whether they wish to enter into New Scheme/Old Scheme

A lot has already been discussed and deliberated in last 2 months on whether employees should opt for new scheme or old scheme of taxation. Now its action time for employers who have to start deduction TDS when they make payments to employees in the April 2023 and thereafter. CBDT's Circular 04 has cast a liability

on the employer, as always, to obtain a declaration from employees on the computation of their income for the FY 2023-24 so as to estimate the monthly TDS amount. Once, the employer asks, then its duty is over and it is the employee's duty to declare whether for FY 2023-24 he/she wishes to go into the new scheme or old scheme. Incase he/she wishes to go with the old scheme, then he/she would have to declare the amount which he/she wishes to claim as deductions like that for HRA/80C/80D/etc. The further issues as well as their answers are as follows –

A. Incase the employee does not declare anything, then what do employers do? The answer is that the employers have to assume that employee wishes to go with the new scheme and apply TDS as such. It is to be noted that the new scheme is now the "default" scheme.

B. At the end of the year, when filing the return, the employee can switch to the old scheme also and compute its tax liability accordingly. It is to be noted that employees can enter and exit in the two schemes every year.

C. A theoretical question may be asked i.e. incase the employers applies TDS according to the new scheme and the employee actually files the return under the old scheme and finally the tax liability under the old scheme is more than the new scheme, would the employer be liable in that case? While as said, this question is not pratically possible, but even hypothetically we do not feel that there would be any liability of the employer in this scenario.

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