Direct Tax Vista

Your weekly Direct Tax recap

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1. No penalty u/s 271(1)(c) of Income Tax Act consequent to an admitted liability under GST and again admitted tax liability in Income tax too

Information sharing between the GST department and Income Tax Dept. has become the order of the day. Further to the crackdown on ITC on purchase/expenses under GST, it goes without saying that action in the same cases would be initiated in Income Tax too. Incase of an admitted liability in GST, the same issue will come up under Income tax also disallowing the corresponding purchases/expenditure. Say the liability under Income Tax is also admitted to buy peace and to avoid prolonged litigation and to co-operate with the department, then the question is whether the department also levy penalty u/s 271(1)(c).

In this regard, it was held in the case of H K INDUSTRIES Vs INCOME TAX OFFICER [2023-VIL-926-ITAT-MUM] that penalty under section 271(l)(c) of the Act cannot be levied on additions made merely on estimations. Similar view was taken in the following cases –

A. The Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580

B. Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53

2. During Election time More Flying squads will check vehicles, etc. But Notice for Seized cash needs to go before the time barred period

The Ministry of Finance has issued an SOP for the CBIC officers to get more involved in poll-vigilance as far as economic irregularities are noticed. The CBICs officers

would also now be involved in a larger role as per Instruction No. 22/2023-Customs on 'SOP for stepping up vigilance during elections. Their responsibilities would include identifying and detaining vehicles used for cash movement etc., Using the DGARM reports. This information should be disseminated to and from other enforcement agencies/ department and action taken thereon.

Now incase a notice in Income Tax need to be issued apropos the seized cash needs to be issued, then it should be issued before the time barred period. As per the proviso to section 143(2) of Income Tax Act, no notice shall be served on the assessee after the expiry of three months from the end of the financial year in which the return is furnished. Now incase such cash is seized say in say July 2023, then notice needs to be issued till 30th June 2025. Incase the notice is issued after the time barred period, then that can be the sole ground of rejection of the consequent Order as in the case of DEPUTY COMMISSIONER OF INCOME TAX Vs SRI EPURU KRISHNA CHAITANYA [2023-VIL-924-ITAT-VPT]

3. India & UAE Trade may get a boost due to MOUs for currency payments between the two countries

The RBI and the Central Bank of the UAE have signed two MoUs to promote the use of local currencies and interlink payment systems. Now Payments by an Indian can be made in INR to UAE directly and payment by a person in UAE can be made in Dhiram to India. There is no requirement of conversion of say INR to USD and then to UAE Dhiram to make the payment by an Indian to UAE and vice-versa. Also, UPI and Instant Payment platforms of UAE would be linked. The Structured Financial Messaging System of India will also be linked to that of UAE. It would cover all current account transactions and permitted capital account transactions.

The benefits will be far reaching and will lead to reduction in cost of cross-border payments and ease of cross border trade in both countries. Faster and safer cross border payments. Investment and remittances between both countries would increase. Exporters and importers can now invoice in their local currencies.

4. Clarification on Taxability of Income earned from Off-Shore Investments in Investment Fund Routed through an AIF

By the Finance Act, 2023, the definition of 'investment fund' under the Income-tax Act, 1961 was amended to include reference to the International Financial Services Centres Authority (Fund Management) Regulations, 2022 under the International Financial Services Centres Authority (IFSCA) Act, 2019. Pursuant to this CBDT vide Circular 12/2023 Circular has amended Circular 14/2019 clarifying regarding the taxability of income earned by a non-resident investor from off-shore investments in investment fund routed through an Alternative Investment Fund. The income tax exemption under section 115UB shall apply only to income earned by a non-resident investor from off-shore investments in investment fund routed through Category I or Category II AlFs regulated by Securities and Exchange Board of India (SEBI) or International Financial Services Centers Authority (IFSCÅ).

5. Distribution of Income to Non-residents on offshore derivatives Instruments, exempt

The Central Board of Direct Taxes (CBDT) has amended Rule 21AK to include income arising to a non-resident as a result of the distribution of income on offshore derivative instruments within the scope of exemption under section 10(4E).

However, the contract should be entered into by the non-resident with an offshore banking unit of an IFSC which holds a valid certificate of registration granted under IFSCA (Banking) Regulations, 2020 by the IFSCA; and such contract, instrument or derivative should not be entered into by the non-resident through or on behalf of its PE in India.

6. Applicability of Sec 154 in assessments which reach finality at higher stages

An apparent mistake u/s 154 of Income Tax Act is one which can be found out without any efforts and reasonings or for which no detailed reason or enquiry is required. In this regard, the law has been fairly settled by the Hon'ble Supreme Court in the case JRD Stock Brothers (P) Ltd. Vs. CIT.

Now, once the appeal of the assessee against quantum additions have attained finality upto the level of the Tribunal then question arises as to whether the AO can rectify the order passed by him on an issue which is highly debatable and after the order was also allowed by CIT(A)? Naturally, the answer is in the negative as it will amount to re-visiting the order of the assessment, which has attained finality and it would be a case which is not apparent from records. The same was held in the case of DY. COMMISSIONER OF INCOME TAX, CIRCLE-16(1), HYDERABAD Vs SRI SRINIVASA CHAKRAVARTHI RAJU GOKARAJU [2023-VIL-932-ITAT-HYD]

7. To levy Sec 69A on excess cash, the burden of proof is on the AO, to bring out the alleged source

In cases falling under Sec 69A, the words used show that before any of these sections are invoked, the condition precedent as to existence of alternate source of money must be conclusively established by material on record/ evidence. Section 101 of The Indian Evidence Act, 1872 specifies that Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In Mad HC in N Swamy 241 ITR 363 relied by Chennai ITAT in Omega Estates and Chd ITAT in Dr. R.L.Narang, it was held that the burden of showing that the assessee had undisclosed income is on the revenue.

To levy Sec 69A of Income Tax Act relating to unexplained money, for cash deposits, the AOs generally divide the deposits as some part being in course of business and allege some as unexplained. The explanations of assessees are also ignored while passing the order. The assesees on the other hand argue that the entire deposits is from business and the difference in cash in hand and cash sales is actually the cash purchases. For example, incase the cash balance is Rs.20 Lakhs and Cash deposit in bank account is say Rs. 1 Crore, the question is whether the difference Rs. 80 Lakhs is cash purchase or a part of it is unexplained liable to be assessed u/s 69A. However, to sustain the order u/s 69A, the AO has to bring cogent reasons to justify different view taken on cash deposits found in the assesses bank account during the same FY. They have to also bring out the alleged source. Incase no material against

the assessee is brought on record for the cash deposits then the demand woud not sustain. Further there must also be cogent reasons to reject the stock-in-hand. When the closing stock is not disputed, it would be imperative to admit that the difference is the the sales made by the assessee. A similar case was sustained in the matter of SRI KANAKA MAHALAKSHMI CRACKERS Vs INCOME TAX OFFICER [2023-VIL-925-ITAT-VPT]

Similarly, In ITO vs. Mrs. Deepali Sehgal (ITAT Delhi), ITA No. 5660/Del/2012, the AO noted that assessee had withdrawn huge cash from bank account and the same amount had been deposited to the same account after lapse of substantial time. The AO rejected the explanation and held that the assessee hadcash deposit of Rs.24,38,000/- as unexplained money and the assessee found to be the owner of the money as he had not offered any acceptable and cogent explanation. AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. Hence, the addition made by AO without any legal and justified reason was rightly deleted by the CIT (A).

The provisions of section 115BBE of the Income Tax Act are applicable where addition is made under section 69A i.e. from residuary category w.e.f. 01/04/2017. Even where the assessee has successfully explained that the excess stock & excess cash was nothing but business income of assessee and The CIT(DR) could not dislodge the contention and observations that the surrendered amount was pertaining to excess stock & excess cash which was business income of the assessee, the impugned income will not be entangled in the clutches of Section 69/69A/69B of the Act and therefore do not warrant application of Section 115BBE of the Act at all. The same was held in the case of DCIT(CENTRAL)-2 INDORE Vs SHRI KRISHNA KUMAR VERMA [2023-VIL-283-ITAT-IND]

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