Direct Tax Vista

Your weekly Direct Tax recap

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By Vivek Jalan, Partner, Tax Connect Advisory Services LLP

1. Section 270AA is a complete Code to decide whether Penalty is to be levied u/s 270A @200% or @50%,

Once the Income Tax demand is admitted, the penal action starts. Penal action is also subject to an immunity u/s 270AA of The Income Tax Act if the case is distinguished as “under-reported” as against “mis-reported income”. Section 270A details both these cases very elaborately. However, the immunity has to be pleaded and for pleading and granting immunity Section 270AA is a complete Code.

In terms of Section 270AA(2) such an application pleading for immunity has to be made within 1 month from the end of the month in which the order has been received and shall be made in such form and verified in such manner as may be prescribed. It has to be portrayed in the form of grounds or argued that the case of assessee was of under reporting the income only and no misreporting was involved. If these are not done then, the penalty should be levied @200% treating the income as mis-reported and not @50% treating the income as under reported as was held in the case of AMAR NATH Vs ITO, WARD 1(1), GURGAON [2023-VIL-968-ITAT-DEL].

2. Sugar Manufacturing Co-operatives may now get their old IT demands dropped by filing applications u/s 154 and u/s 155(19)

The recent amendments in the Income Tax Act have provided much-needed relief to co-operative sugar factories operating in India by allowing deductions for sugarcane purchases made at or below the government-approved price. The Finance Act 2023 amended section 155 to allow AO to recompute the total income of a sugar mill co-operative and allow the deduction for sugarcane purchase expenditure that was equal to or less than the Government fixed price. The new section 155(19) empowers the Assessing Officer to recompute the total income for previous years with disputed deductions, resolving long-standing tax litigation. By following the SOP provided in Circular 14 of 2023 dated 27th July 2023, co-operative sugar

factories can make applications to the JAO with the prescribed documents to resolve their tax disputes amicably.

Section 155(19) provides that in the case of a sugar mill cooperative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly in any previous year commencing on or before 1st April 2014, the Assessing Officer shall, on the basis of an application made by such assessee in this regard, recompute the total income of such assessee for such previous year. The Assessing Officer shall allow such deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed or approved by the Government for that previous year. The application needs to be made u/s 154. Most importantly, for the purposes of Section 154 the period of four years specified in I-T section 154(7) shall be reckoned from the end of previous year commencing on the 1st day of April, 2022. Hence sugar co-operatives still have much time for making the applications. The JAO shall recompute the total income of such co-operative society under the provisions of section 155(19) read with section 154 of the Income Tax Act. The rectification under these sections can only be made till 31st March 2027. However, The JAO Officer shall pass an order u/s 155(19) read with section 154 within a period of six months from the end of the month in which the application is received.

The co-operative society seeking relief under I-T section 155(19) should file an application to the JAO for AY 2015-16 or any earlier assessment year (AYs) with the following documents –

(i) Computation of tax, audit report u/s 44AB, audited Profit & Loss Account and Balance Sheet.
ii) Assessment Order/Appellate Order(s) of various appellate fora, as applicable, with respect to the disallowance made on account of excess price paid for purchase of sugarcane above the Statutory Minimum Price (SMP).
iii) Notice of Demand issued under section 156.
iv) Challan of taxes paid, if any.

v) Copy of Order(s)/Other legal instrument(s) regarding price fixation by Government based on which excess price was paid for purchase of sugarcane over and above Statutory Minimum Price (SMP).
vi) Documentary evidence regarding registration of co-operative society under State/Central Act.
vii) Any other document as considered necessary by the JAO for the purposes of recomputation of total income under section 155(19).

3. Co-operative Societies may get their delayed returns condoned u/s 119(2), subject to conditions

Another Circular to mitigate hardship faced by Co-operative societies claiming deduction u/s 80P of the Act which had been delayed in furnishing return of income due to delay in getting the accounts audited under respective State Laws. In order to mitigate genuine hardships in these cases has issued Circular 13 of 2023 to permit the cases of those assesses who have approached the CBDT or filed officers or even new applications for condonation of delay, authorizing CCITs and DCITs to deal with such applications and decide such applications on merits.

However important is to note that it has to be demonstrated that the delay was caused due to circumstances beyond the control of the assessee with appropriate documentary evidence/s and there should not be a indication towards tax avoidance or tax evasion during the course of the disposing off the applications.

4. Merely blaming a Tax Consultant for wrong deductions will not absolve assessee from penalty; Tax planning may be legitimate; Tax avoidance is not

The Courts have started taking a serious view for those assesses who habitually obtain fraudulent refunds in Income tax on the basis of false claims. In such cases, merely paying the tax and interest will not suffice, but even penalties u/s 270A of the Income Tax Act need to be paid upto 200% or more of the tax evaded. Further u/s 276C/ 277 prosecution can also be invoked. Tax Consultants can also be booked u/s 278 on The Income Tax Act. However, merely blaming a tax consultant would also not come to the rescue of the assessee.

The media has recently reported busting of rackets of fraudulent claim of tax refunds by employees of well known companies, who had falsely claimed loss under the head income from house property in order to file fraudulent tax refund claims. The Income Tax Dept has also issued notices for furnishing proof of claiming rent allowances u/s 10(13A) and deductions on account of housing loan and interest u/s 24(b). Now in the case of SANJEEV KUMAR MANCHAND Vs ITO, NASHIK [2023-VIL-992-ITAT-PNE], The Hon'ble ITAT has ruled that in the following circumstances penalty @200% u/s 270A can be levied -

1. Where the assessee has a history for habitually claiming fraudulent refund by increasing deductions and reducing his taxable income
2. Where assessee could not justify why he has continuously misreported his income and what was the legal basis for such an action
3. Where the assessee has no plausible legal explanations were submitted why such misreporting was done by the assessee.

Hence, assesses may beware of the changing scenario for tax misrepresentations or misdeclarations.

5. Depreciation on leased assets allowed, even if claimed in revised return

After issuance of AS-19 issued by the ICAI, the CBDT vide Circular No. 2/2001 dated 9 February 2011 has clarified that capitalization of assets acquired under the finance lease by the lessees in their books of account will not have any bearing on the allowance of depreciation on those assets u/s 32 of the Income Tax Act and that the ownership of the asset is determined by the terms of contract between the lessor and the lessee. Further, as per the above circular the owner is entitled to depreciation, whether he is lessee or lessor, depending upon the terms of the contract. The Hon'ble apex Court in the case of ICDS Ltd. vs. CIT, Mysore, 350 ITR 527 held that the lessor is entitled to claim depreciation u/s 32 of the Act in respect of leased out assets.

If the depreciation was not claimed in the original return and was claimed in a revised return after the assessee discovers the omission or any wrong statement in the original return, the claim would be allowed vide the mandate of Section 139(5)

as was held in the case of RELIGARE FINVEST LTD Vs DEPUTY COMMISSIONER OF INCOME-TAX [2023-VIL-991-ITAT-DEL]. The mere fact that such a revision in the return was not ratified by the auditors cannot come in the way of a claim which is otherwise allowable to the assessee.

(*The author is a CA, LL.M & LL.B and Partner at Tax Connect Advisory Services LLP. The views expressed are personal. The author is The Lead - Indirect Tax Core Group of CII-ER and The Chairman of The Fiscal Affairs Committee of The Bengal Chamber of Commerce. He has Authored more than 15 books on varied aspects of Direct and Indirect Taxation. E-mail - vivek.jalan@taxconnect.co.in*)