Direct Tax Vista

Your weekly Direct Tax recap

Edn. 73 – 5th Sept 2023

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1. From 1st October 2023 - Form 71 for Claim of TDS deducted in subsequent years but income offered for tax in earlier year

Section 155(20) of Income Tax Act was Inserted vide THE FINANCE ACT, 2023 dated 31-03-2023 and will be applicable w.e.f. 01-10-2023. It provides an important relief and specifies that Where any income has been included in the return of income furnished by an assessee under section 139 for any AY and tax on such income has been deducted at source and paid to the credit of the Central Government in a subsequent financial year, the AO shall, on an application made by the assessee within a period of **two** years from the end of the FY in which such tax was deducted at source, amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year, and the provisions of section 154 shall, so far as may be, apply thereto and the period of four years specified in Sec 154(7) shall be reckoned from the end of the FY in which such tax has been deducted. This situation arises when a deductor withholds tax in the year in which the income is paid to the taxpayer. However, the taxpayer has already included that income on an accrual basis in his earlier tax returns. This causes a TDS mismatch, as the income has already been taxed on accrual basis, but tax is only deducted later when payment is made.

To facilitate this amendment, the CBDT vide *Notification No. 73/2023 dated August 30, 2023*, has introduced a new Rule 134 into the Income-tax Rules, 1962. This rule mandates the submission of Form 71 to claim TDS credit in such scenarios. The following are the salient features of the Form 71 -

1. Form No. 71 will be provided to the Principal DGIT(Systems) the DGIT(Systems) or the person authorized.

2. Form No. 71, will get issued electronically under a DSC if ITR is needed to get provided under a digital signature; or through an electronic verification code.
3. The Principal DGIT (Systems), DGIT (Systems), or a person authorised would forward Form 71 to the Assessing Officer
3. The Form seeks the following information from the assessee:

- Personal details (Name, Address, PAN, Aadhaar, Residential Status, E-mail Id, Mobile Number and relevant assessment year, date of furnishing return of income etc.).
- Total income of the assessee returned in the relevant assessment year, amount of specified income and rate at which such specified income was subject to tax.
- Amount of tax deducted, date of deduction of tax, section and rate at which tax deducted, date of payment of tax deducted to the central Government and amount of tax claimed for the relevant assessment year.
- Name, PAN and TAN of deductor.

Consequent to this amendment, an amendment has also been made by inserting a provisio to section 244A(1)(a) of the Act to provide that the interest on refund arising out of above rectification shall be for the period from the date of the application to the date on which the refund is granted.

Provided that where refund arises as a result of an order passed by the Assessing Officer in consequence of an application made by the assessee under sub-section (20) of section 155, such interest shall be calculated at the rate of one-half per cent. for every month or part of a month comprised in the period from the date of such application to the date on which the refund is granted;

2. CBDT notifies procedure to make a reference to valuation officer during search

The CBDT has made modifications to the Income Tax Rules with the addition of Rule 13 and Rule 13A. These rules are accompanied by the introduction of two new forms: Form No. 6C and Form No. 6CA. These are aimed towards a more streamlined and

transparent system. The same is in line with the amendments made by Finance Act 2023. Professionals and entities who render these services may take note and take advantage of the opportunity to render their professional services.

Rule 13 is to provide a Procedure to requisition services under Section 132(2) and to make a reference u/s 132(9D). The rule allows various authorities, including the Principal Chief Commissioner and the Chief Commissioner, to approve specific persons or entities for requisitioning services. Approved persons or entities receive a unique "Designated Approval Number."

Rule 13A lays out a clear procedure for determining the fair market value of different kinds of properties, from immovable properties to pieces of art and shares. Entities who undertake valuations need to submit their findings using Form No. 6CA.

Form 6C serves as an application for entities wishing to provide services under section 132(2)/132(9D) of the Income Tax Act, 1961. It demands personal information, details about the services provided, and relevant qualifications. Form No. 6CA is a report about the valuation under section 132(9D) of the Income Tax Act, 1961. It contains detailed information on the property being valued, the method employed for valuation, and the fair market value determined.

3. India US DTAA is applicable when payment is made to USA and services rendered by Honk Kong entity

"Bill from – ship from" transactions incase of services are quite common where services are rendered by an entity and payment is made to another entity (the provider of services). Thereafter, of-course these two entities settle their own accounts separately. This time the question arose that where service was rendered by an independent corporate entity though a subsidiary, then can such payment made to the holding company be considered as "**mere routing of payment"** OR whether the payee would be considered as a service provider? Would the service rendered (not provider) be considered as a '**beneficial owner of payment**'?

The fact in the case was that on specific requirements by buyers, diamonds were sent for certification by Gemmological Institute of America (GIA for short). The assessee entered into a customer services agreement with the GIA Inc USA. Now GIA set up a laboratory at Hong Kong under a separate company called GIA Hong Kong Laboratory Ltd. However, the assessee had no direct relationship or any agreement with the GIA Hong Kong Laboratory, Hong Kong. The payment has been made to its offshore Bank Account of In Honk Kong owned by GIA, USA. The AO held that the assessee has made payment to GIA Hong Kong Laboratory and not GIA USA and therefore cannot claim the treaty benefit between India USA. However, the following facts were noted –

A. A customer service agreement has been entered into which clearly establishes that the agreement is with the GIA USA and not with Honk Kong entity
B. The certification was done by the US entity
C. Payment was also done to the USA Entity (and not the Honk-Kong entity) with offshore bank account in Honk Kong.

The state of source is not obliged to give up the taxing rights over the passive income in the nature of Fees for Technical Services (FTS) merely because the income was paid direct to recipient of a state which with the state of source had concluded / executed DTAA. Since, the assessee had furnished copy of tax residency certificate (TRC) from USA authority from USA in Form-10F as required under section 90(4) and 90(5) of the Indian Income Tax, the assessee is entitled to the benefits of DTAA between India and USA.

While questions have arosen on the basis of facts, the High Court of Gujarat in the case of COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION AND TRANSFER PRICING) Vs STAR RAYS [2023-VIL-99-GUJ-DT], appreciated the factual position wherein there was a condition in the customer service agreement between Indian & USA entity, through the bank invoice and the Bank remittance advice a finding of fact had been arrived at that the assesse's case was protected under the

India-USA DTAA. Hence the same was not a question of law and the case was clear from facts itself. Therefore, the matter was disposed off in favour of the taxpayer. The ratio of the judgement can be applied to other cases also, even domestically incase of “Bill from – ship from” transactions in services.

4. An agreement for sale of shares has to be accepted by AO unless proved fraudulent

Where all corporate, regulatory and statutory approvals, consents are given by the stock exchanges on which the Company is listed and acknowledgement from SEBI in respect of a off-market transaction for sale of shares, the AO cannot question the value merely because the quoted price of the shares is more than the sale agreement price. The same was held in the case of TRAK SERVICES (P) LIMITED Vs INCOME TAX OFFICER [2023-VIL-1131-ITAT-DEL]. It was noted that in the cases of Commissioner of Income tax vs Gillanders Arbuthnot & Co. [1973] 87 ITR 407 (SC) and Commissioner of Income tax vs George Henderson and Co. Ltd. [1967} 66 ITR 622 (SC), it was held that Full value of consideration used in section 48 does not have any reference to market value but only to consideration referred to in sale deeds as sale price of assets which have been transferred. An agreement always has to be taken to be correct if assessee has acted bonfidely upon it and unless AO has brought evidence on record that it is fraudulent. AO cannot step in the shoes of businessman and decide as to how affairs of business were to be run and wasteful or excessive expenditure was to be curtained.

5. An agreement for loan has to be accepted by AO unless proved fraudulent

Vide Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, courts have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor. This was considered to have led to the provision becoming ineffective in handling evasion

when routed through a layered credit claim. Therefore, the provisions of Section 68 of the Income Tax Act had been amended by FA 2022 so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor. However, before this amendment, there was no requirement to prove source of source.

Further, there cannot be any addition u/s 68 of Income Tax Act for loan taken for which complete particulars and evidence were furnished by those parties and in fact the loan taken was also repaid back. Such the transaction cannot be considered as bogus loan, fraudulent, circulated transaction or accommodation entry, unless proved with evidence, especially when the statement given by a third party is retracted. The AO cannot reject filing of confirmations, bank statement and copy of returns merely on suspicion. Hon'ble High Court of Gujarat held in the case of Ranchhod Jivabhai Nakhava Appeal No.50 of 2011, on the ratio of that once the assessee has discharged initial onus by furnishing copy of PAN, confirmation of lenders, it was the duty of Assessing Officer to investigate or verify about the lenders, Rohini Builders [2002] 256 ITR 360 [2003] 127 Taxman 523 (Guj). The same was upheld in the case of M/s WHITE WILLOW VISHRAM APARTMENT Vs INCOME TAX OFFICER, WARD-1 [2023-VIL-1129-ITAT-SRT].

However a word of caution for taxpayers is that to escape from rigors of Section 68 they have to furnish details and particulars showing identity of creditors/investors, their capacity and credit worthiness and genuineness of transaction. In the case of DHANWAN LEASING AND FINANCE COMPANY LTD. VERSUS ITO, WARD 2 (2), INDORE - 2023 (2) TMI 698 - ITAT INDORE it was held that for establishing a factum of conduit company, the assessee is duty bound to establish that source companies are also group companies and assessee after receiving the amount further invested same by making investments in group company. Investor companies, who invested amount in assessee company as share application money, are not part of main group company. Assessee had also onus to prove that it is a conduit company and also establish identity, capacity and credit worthiness of investor companies and genuineness of transaction.

6. How to prove genuineness of gifts

As for gifts it is held in the case of RAJENDRAPRASAD BABULAL KHETAN Vs THE ACIT CENTRAL [2023-VIL-1126-ITAT-SRT] that assessees have to substantiate the sources of funds in the hands of giver of gift, relation with the donor and donee and that the donor had sufficient funds being reflected in their books of accounts. To prove the identity and creditworthiness of the donor, it is sufficient that the assessee submits the Capital account, Balance sheet, Income Tax Return (ITR) and bank statement of the donor. Such gifts cannot be considered as bogus entries, fraudulent, circulated transaction or accommodation entry, unless proved with evidence.

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