Direct Tax Vista

Your weekly Direct Tax recap

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By Vivek Jalan, Partner, Tax Connect Advisory Services LLP

1. Inventory verification and valuation needs to be done meticulously; mere allegation of the entries being an 'afterthought' would not prevail

The Finance Act 2023 has taken a major step forward by introducing the concept of inventory valuations by Cost Accountants in specific cases, as granted by Section 142(2A) of the Income Tax Act. These amendments will take effect from April 1, 2023, and will apply to the respective assessment year and all subsequent assessment years. Hence inventory valuation will gain much significance now in income tax assessments. However, inventory verification and valuation is a tedious job and needs to be done meticulously. Certain accounting entries are always pending to be made in the books of accounts. There always remains a backlog of entries to be made in the books of account in case of every business; further certain materials may be at job worker's premises or with customers or suppliers (for re-working); Furthermore, certain materials of others may be at the assesse's premises for job worker or customers material (for re-working) or suppliers material (due for return) maybe at the assesse's premises. The effect of these need to be taken by the tax departments, especially while doing an inventory verification.

Mere allegation of the entries being an 'afterthought' would not prevail as was held in the case of THE ACIT, CIRCLE-1, BHARUCH Vs M/s J. K. JEWELLERS [2023-VIL-1347-ITAT-SRT]

2. Supply of goods cannot be vivisected to alienate services portion for levying TDS u/s 195

Every supply of goods always has an element of supply of services and it is the principal supply by which the entire transaction is accounted for. Pure supply of

goods alongwith supply of certain services like loading, unloading, freight, insurance, erection, start-up, commissioning, etc would have to be considered as a part of the supply of goods itself. Where a contract is related to engineering, manufacture, supply, supervision of erection, start-up and commissioning of complete plant and equipment in India and where the entire Plant is manufactured in a foreign Country, further the cost of supervision, start-up and commissioning are included in the cost, then it is to be considered as a supply of goods. The value cannot be imaginarily vivisected into supply of goods and supply of services. The title in goods passes to the Indian Company on handing over shipping documents in the foreign Country. All the business activities are performed in foreign Country. The income arising from such business activities cannot be taxed in India under Article 7 of DTAA, as no business is carried out by the foreign company in India. Thus, there is no question of TDS u/s 195 of The Income Tax Act in these cases as was held in the case of DCIT Vs ORIENT PAPER MILLS [2023-VIL-1350-ITAT-JPL].

3. To write off a loan/advance/investment, it has to be explained why it was made in the first instance

Incase loans/advances/investments are written off in a year, first and foremost requirement is to prove the financial justification/ business expediency and need for making the loans/advances/investments and also substantiate with documentary evidences the commercial expediency.

The financial justification/ business expediency/ commercial expediency for making loans/advances/investments can be something like a need for enhancement of business activity of the assessee in certain market; It can be a reason like a need in the normal course of assessee's business to make business more profitable. However incase basic elements like these are not a ground, then the write off of loans/advances/investments cannot be allowed, as was held in the case of ELECTRONICA MACHINE TOOLS LTD Vs DCIT, CENTRAL CIRCLE-1(1), PUNE [2023-VIL-1346-ITAT-PNE]. In this case, the assessee has made investment in its 100% subsidiary company based in Switzerland.

4. Section 50C of Income Tax applicable on a Gift to a daughter in certain cases

The question of law is that where an immovable property is transferred by the assessee to his relative without any consideration, Is the said transfer taxable in the hands of the relative in view of the provisions of Section 50C of the Act, being the difference in the registered sale deed price and the stamp duty valuation price of the property sold? It has to be considered that gift given to relative is not considered as a “transfer” as per Section 47(iii) of the Income Tax Act. It has been held in the case of KARAMSHI KARSAN BHAVANI Vs INCOME TAX OFFICER [2023-VIL-1349-ITAT-RKT] that the provisions of section 50C are applicable in this case as it is a case of transfer of property through sale deed at a price lower than the value adopted for stamp duty valuation.

In the case of Shri Jay Atulbhai Mody v, ITO in ITA number 240/Rjt/2017, the ITAT held that property transferred to Mother through Sale Deed is a sale and not Gift, taxable as capital gain.

However, what needs to be noted in both these cases is that there was an amount mentioned in the sale deed for administrative purposes and the sale deed did not specify the fact that the transaction was that of gift. Hence while entering into these transactions the due process of law needs to be followed to get the corresponding treatment.

5. CBDT Notification No 88/2023 Dated10 October 2023: Amendment in Rule 114B, 114BA & 114BB: for furnishing declaration in Form 60 by person not having PAN; Company/Firm have to possess a PAN

The CBDT has amended rules related to obtaining and quoting PAN. The amendments have been made in Rules 114B, 114BA and 114BB of The Income Tax Rules alongwith Form 60. The following are the amendments:

1. Amendment in Rule 114B: Rule 114B specifies transactions in relation to which PAN is to be quoted in all documents for the purpose of Section 139A(5)(c). Every person specified under this rule shall quote his PAN in all

documents pertaining to the transactions specified under the rule. The second proviso to Rule 114B allows a person to furnish a declaration in Form No. 60 if he doesn't possess a PAN. The CBDT has amended this proviso to exclude a "**company or a firm**" from the requirement to furnish Form No. 60. Also, a new proviso has been inserted to allow a foreign company to furnish a declaration in Form No. 60 if a foreign company has no income which is chargeable to income tax in India and does not have PAN. This relaxation is available only with respect to the certain transactions entered into with an IFSC banking unit. To incorporate the change made in Rule 114B, Form 60 has also been amended.

2. Amendments in Rule 114BA and Rule 114BB: Rule 114BA specifies the list of transactions, for the purposes of Section 139A(1)(vii), when entered into by any person who has not been allotted a PAN, shall within such time, as may be prescribed, apply to the AO for the allotment of a PAN. Rule 114BB mandates that every person shall, at the time of entering into a specified transaction for the purpose of Section 139A(6A), quote his PAN or Aadhaar number, in documents pertaining to such transaction, and every specified person for the purpose of clause (ab) of Explanation to section 139A, who receives such document, shall ensure that the said number has been duly quoted and authenticated. A new proviso has been inserted to provide that provisions of these rules do not apply if a non-resident or foreign company conducts transactions with an IFSC banking unit that involve deposits or withdrawals through means other than cash or opening a current account that is not a cash credit account. However, the benefit is available subject to the condition that non-resident/foreign company has no income chargeable to tax in India.

6. "Income" is more than "Income Chargeable to Tax"; and "Income Chargeable to Tax" is more than "Income Tax"

Section 148A of Income Tax Act was inserted in the IT Act w.e.f. 1.4.2021 to render the power of Revenue of reopening cases to be more transparent so as to avoid casual invocation of Section 147/148. Section 148A not only saves the assessee

from casual commencement of proceedings under Section 147-148 but also saves the Revenue of precious time and energy which may be wasted in perusing fruitless, frivolous and vexatious cases. However, in certain cases still the ordeal continues, which makes the Courts frown and one of them was NITIN NEMA Vs OFFICE OF PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX [2023-VIL-119-MP-DT]. Several High Courts have held that 'income chargeable to tax' cannot be the gross receipts/consideration/income in any business transaction. Few among these are Division Bench decision of Gujarat High Court rendered on 20.4.1999 in The Commissioner of Income Tax Vs. President Industries, 1999 SCC Online Guj. 402, the Division Bench decision of Bombay High Court in I.T.A. No.313/2013 Commissioner of Income Tax Vs. Shri Hariram Bhambhani decided on 4.2.2015 and decision of Karnataka High Court in the case of Mr. Sanath Kumar Murali Vs. The Income Tax Officer & Ors. In W.P. No. 7647/2023 (T-IT)

There is a palpable and elementary distinction between the expression 'income', which is inclusively defined under Section 2(24) of IT Act and 'income chargeable to tax'. 'Income chargeable to tax' obviously is less than 'income' as it is arrived at after deducting the permissible deductions under IT Act from 'income'. Incase an amount of say Rs.100 is the gross receipt of sale consideration, income chargeable to tax would obviously be less than the said amount. Even if the assessee does not file Income Tax Return, the process of the Section 148, 148A, or Section 149 have to be followed and the assessee cannot be prevented from taking advantage of the facilitating provisions merely because of his failure to file return. When the AO therefore did not consider this difference, possibly due to the fact that the threshold limit of Rs.50 Lakhs was being breached on the application of this principle, the Madhya Pradesh High Court had no option but to impose costs and grant a part of the payment to the assesses.

7. Reopening of assessment cannot be made on basis of change of opinion

A plethora of judgements are there on the grounds that Reopening of assessment cannot be made on basis of change of opinion. Few more pronounced by The Hon'ble Bombay High Court are:

Where AO issued first assessment order after carefully scrutinizing material furnished by assessee relating to his immovable property and computed deductions under Section 54(F) of The Income Tax Act on basis of said material and when primary facts necessary for assessment are fully and truly disclosed, AO is not entitled to commence proceedings for reassessment on change of opinion was held in the case of ASHRAF CHITALWALA Vs DEPUTY COMMISSIONER OF INCOME TAX MUMBAI [2023-VIL-118-BOM-DT]

Again in the case of VAMAN PRESTRESSING CO. PVT LTD Vs THE ADDITIONAL COMMISSIONER OF INCOME TAX, MUMBAI [2023-VIL-117-BOM-DT] it was held that just the fact that assesee has advanced borrowed capital to sister concern and associate concern without charging any interest and therefore, interest claimed on borrowed capital is not allowable under Section 36(1)(iii) of the Act, cannot be a basis for re-opening of assessment, If amount has been advanced as a measure of commercial expediency, and the same was checked during assessment.

8. Section 271(1)(c) cannot be invoked due to a difference of opinion

Section 271(1)(c) provides that if the AO or JC(A) or the CIT(A) or the PCIT or CIT in the course of any proceedings under The Income Tax Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may levy a penalty. However, the Section cannot be invoked on a difference of opinion. Hence where an Assessee claimed additional depreciation on certain replacement of plant and machinery as integral part of plant and machinery and it was denied on the ground that additional depreciation is allowed on acquisition and installation on new plant and machinery and not for replacement of plant and machinery already in existence, there is only a difference of opinion. Mere making a claim which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee as was held in the case of M/s HEIDELBERG CEMENT INDIA LTD Vs DCIT, CIRCLE: 2 (1) GURUGRAM [2023-VIL-1343-ITAT-DEL].

9. No TDS on freight u/s 194C incase the GTA owns ten or less goods carriages at any time during the previous year

TDS on freight u/s 194C of The Income Tax Act may not be deducted incase where the GTA owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect. It was held in the case of M/s BHAGWAN DASS JAGAN NATH Vs THE DY. CIT, CIRCLE, AMBALA [2023-VIL-1331-ITAT-CHD] that merely due to certain deficiencies in the declaration, the claim for expenses cannot be disallowed.

Section 194C(6) provides that No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with] his Permanent Account Number, to the person paying or crediting such sum.

(*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*)