Direct Tax Vista

Your weekly Direct Tax recap

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1. Revenue cannot take advantage of mistake/ignorance of the assessee: Claim for housing loan interest and principal and Mediclaim u/s 24(b), 80C and 80D can be made vide rectification u/s 154

Chatterjees are making headlines. Mrs Chatterjee made headlines in the movie Mrs Chatterjee Vs Norway and now Mr Chatterjee may make headlines in a case which would certainly provide relief to many small assesses. Not very often do we witness assesses approaching the ITAT for Rs.1.2 Lakhs of deduction, but when they do, such cases may as well build important jurisprudence.

What do you do incase you forget to claim deduction for housing loan interest and principal and Mediclaim u/s 24(b), 80C and 80D resp., in the return and say even the time limit for filing revised return elapses. You may file a rectification u/s 154 of Income Tax Act as held by The Hon'ble ITAT Kolkata in the case of SHRI SANDIP CHATTOPADHYAY Vs ITO [2023-VIL-1486-ITAT-KOL]

Merely because a claim for housing loan interest and principal and Mediclaim u/s 24(b), 80C and 80D resp., has not been made in the return of income, the same cannot be rejected by the AO. The revenue cannot take advantage of mistake/ignorance of the assessee. Circular No. 14 of 1955 dated 11.04.1955 issued by the CBDT states that the officers of the department must not take advantage of the ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing relief. At the expense of making the article long, we are reproducing The Circular below –

"Administrative instructions for guidance of income tax officers on matters pertaining to assessment

1. The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while 1TO's are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under s. 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his nights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should-

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4. Public Relations Officers have been appointed at important centres, but by the very nature of their duties, their field of activity is bound to be limited. The following examples (which are by no means exhaustive) indicate the attitude which officers should adopt

(a) Sec 17(1): While dealing with the assessment of a non-resident assessee the officer should bring to his notice that he may exercise the option to pay tax on his Indian income with reference to his total world income if it is to his advantage.

(b) Sec. 18/3), (3A), (3B) and (3D): The officer should in every appropriate case bring to the assessee's notice the possibility of obtaining a certificate authorizing deduction of income-tax at a rate less than the maximum or deduction of super tax at a rate lower than the flat rate, as the case may be.

(c) Secs. 25/3) and 25(4): The mandatory relief about exemption from tax must be granted whether claimed or not; the other relief about substitution, if not time barred must be brought to the notice of a taxpayer.

(d) Sec. 26A: The benefit to be obtained by registration should be explained in appropriate cases. Where an application for registration presented by a firm is found defective, the officer should point out the defect to it and give it an opportunity to present proper application.

(e) Sec. 33A: Cases in which the ITO or the Asstt. Commissioner thinks that an assessment should be revised, must be brought to the notice of the CIT.

(f) Sec. 35: Mistakes should be rectified as soon as they are discovered without waiting for an assessee to point them out.

(g) Sec. 60(2): Cases where relief can properly be given under this subsection should be reported to the Board.

5. While officers should, when requested, freely advise assessees the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an

assessee's ignorance to collect more tax out of him than is legitimately due from him."

However, the other side would rely on the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. vs CIT (2006) 284 ITR 3231 (SC) wherein two issues were formulated –

i. Whether the unclaimed deduction can be claim before the assessing authority without filing the revised return
ii. Whether the power of the appellate authority can allow the claim of duction which was not claimed in the return of income.

The issue was settled by considering that the appellate authority has coterminous power to accept the deduction which was not claimed in ITR. Incase the assessee submits all relevant documents; the claim should be accepted.

2. Only those evidences may be produced during the CIT(A) stage which have already been produced at the assessment stage other than in given circumstances

Assessment stage is the best stage to present all evidences and represent on the basis of facts. Rule 46A of Income Tax Rules requires that only those evidences may be produced during the CIT(A) stage which have already been produced at the assessment stage other than in given circumstances. It states as follows -

46A. *(1) The appellant shall not be entitled to produce before the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :-*
(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or
(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or
(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

As per Section 68 of the Act, the initial burden of proving the creditworthiness of creditors and the genuineness of the transaction is cast upon the Assessee and where the Assessee cannot prove the burden cast upon it u/s 68 of the Act by providing requisite evidences before the Authorities, the CIT(A) may confirm the demand as held in the case of HABITAT HOUSING FINANCE LTD Vs ITO WARD-11(1) NEW DELHI [2023-VIL-1514-ITAT-DEL]. Hence, proper use of the assessment stage must be made while dealing with litigations. However, it is worthy to mention that while Rule 46A only fetters rights of assessee to produce additional evidence but it does not restrain Commissioner (Appeals) power under section 250(4) or section 250(5) of The Income Tax Act.

3. Lower authorities directed to accept Form No.10 filed by trusts belatedly and grant consequential relief

Form 10B incase of trusts have provided sleepless nights to auditors and assesses this year. Many auditors, we are aware, have not even taken the task to fill up and file a close to 50 page form. The question is whether the exemption will be denied incase a trust has not filed Form 10B. A cantena of judgements including the decision of the Hon'ble P&H High Court in the case of CIT vs. Shahzedanand Charity Trust – (1997) 228 ITR 292 (PH) (P.B. No. 25 - 29) have categorically held that the audit report u/s.12A(1)(b) of the Act can be filed even at the appellate stage. Thus, the filing of the audit report along with the return as per provisions of section 12A(1)(b) of the Act is not mandatory. Further in the case of DUSHKAL GO SEWA SAMITI Vs ITO (EXEMPTION), JODHPUR [2023-VIL-1488-ITAT-JDP] it was depicted by the Assessee that it could not file form 10B online due to some technical glitches on portal, but all required data such as income, expenditures and auditors' reports and 12AA registration details were filed in Income Tax Return. It was depicted that

Assessee tried again and again to upload Form-10B, but could not succeed. Thereafter Assessee submitted a physical copy of audit report vide letter to AO. Hence it was held that the reason for not filing Form No.10 was beyond control of assessee and lower authorities have erred in not accepting application for condonation of delay in filing of Form No.10. Lower authorities were directed to accept Form No.10 belatedly filed by assessee and grant consequential relief to assessee.

4. The quantum of revenue accruing to a taxpayer in India can be attributed to activities carried out in India and shall be derived at on the basis of FAR Analysis

Explanation 1(a) under clause (1) of Sub-Section (1) of Section 9 of the Income Tax Act, reads as follows:

> *9. Income deemed to accrue or arise in India –*
> *(1) The following incomes shall be deemed to accrue or arise in India:*
> *(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.*
> *Explanation 1-For the purposes of this clause- (a) in the case of a business other than the business having business connection in India on account of significant economic presence of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India."*

Consider a case where service is provided by an offshore computer, where majority of work is done by the offshore computer and only miniscule work is done by the local Computer in India. For example, a reservation system installed in Spain and having distribution points in India. In this case the would be considered that the distribution network constituted Permanent Establishment (PE) in two forms, namely, fixed place PE and dependent agent PE (DAPE).

However, it was held by The Hon'ble Supreme Court that the quantum of revenue accruing to the taxpayer in respect of bookings in India which can be attributed to activities carried out in India shall be derived at on the basis of FAR analysis (Functions performed, assets used and risks undertaken). The Commission paid to the distribution agents would obviously be deducted even if it was more than amount of attribution.

On the contrary it can be argued that as per Article 7 of DTAA The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. However, the above Article may not really sail through for the reason that in the contracting state, the entire income derived by the assessee will be taxable. This is why Section 9(1) confines the taxable income to that proportion which is attributable to the operations carried out in India as was held in the case of AMADEUS IT GROUP SA Vs ACIT [2023-VIL-1511-ITAT-DEL].

5. Addition cannot be made in hands of beneficiary who has explained the source of the deposit satisfactorily

Section 69A of Income Tax Act specifies as under –

> *"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the 2[Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.]"*

Hence section 69A can be invoked only if the assessee offers no explanation about the nature and source of such funds. However, it is a settled principle in Income Tax

in a plethora of judgements that addition cannot be made in hands of beneficiary who has explained the source of the income satisfactorily.

Where sufficient and credible information including the source by way of all evidences had been submitted during the assessment proceedings for discharging its burden, the onus shifts on the AO to establish otherwise as was held in the case of PRAKASH SINWAL C/o SANGARIA TRADERS Vs INCOME TAX OFFICER [2023-VIL-1513-ITAT-JDP].

6. Section 54F deduction available on reinvestment of capital gain earned on relinquishment of right in partnership firm

Section 2(14) provides that "capital asset" means-

> *"(a) property of any kind held by an assessee, whether or not connected with his business or profession;... but does not include- (i) any stock-in-trade [other than the securities referred to in sub-clause (b)],], consumable stores or raw materials held for the purposes of his business or profession ;.. [(ii) personal effects,..."*

Hence, relinquishment of right from partnership firm is a capital asset as per section 2(14) of the Income Tax Act applying the ratio of the decision in the case of The Hon'ble Supreme Court Judgment in the case of CIT Vs. Mansukh Dyeing and Printing Mills reported in [2022] 145 taxmann.com 151 (SC) and Hyderabad Tribunal decision in the case of Smt. Girija Reddy P. Vs. ITO (in ITA No. 297/Hyd/2012) dated 25.05.2012.

Now, once it is established that relinquishment of right from partnership firm is a capital asset as per section 2(14) of the Income Tax Act, then reinvestment of the same on residential flats will be an allowable deduction under Section 54F of the Act as held in the case of SHRI BIPINBHAI V. PATEL Vs THE ITO [2023-VIL-1516-ITAT-AHM]

7. Foreign exchange fluctuation losses are allowable deduction being a fait accomopli and not a notional loss of contingent nature

AS-11 and AS-30 issued by the ICAI, require that loss/gains on outstanding derivatives contracts are to be recognized on mark to market basis. These Accounting Standards recognise the difference between the year-end foreign exchange rate and the spot rate on the date on which the transactions were entered in respect of forward exchange contracts lying at the end of the year. Consequently, the loss due to fluctuation difference shall be recorded in the books of accounts as ordinary business expenditure. Such 'mark to market' (MTM) gains arising in the subsequent A.Y. are also offered for taxation. Hence foreign exchange fluctuation losses are a fait accomopli and not a notional loss of contingent nature. The MTM method is ultimately a revenue neutral exercise.

It is clear from the observation of the Hon'ble Supreme Court in Woodward Governor's on a similar matter, that loss on revaluation of unmatured forward contracts is allowable (if any arises on such revaluation) and hence the issue was upheld in the case of ACIT (08) Vs SOPRA INDIA PVT LTD [2023-VIL-1517-ITAT-DEL]

8. Nobody advances a loan, in arm's length situation, at a nil rate of interest

Several types of debts, particularly long term unsecured debts, and revenue participation investments could be termed as 'quasi capital. So far as arm's length price of such transactions are concerned, this cannot be 'nil'. Nobody would advance loan, in arm's length situation, at a nil rate of interest. The comparable uncontrolled price of quasi capital loan, unless it is only for a transitory period and the de facto reward for this value of money is the opportunity for capital investment or such other benefit, cannot be nil as was held in the case of KALPATARU POWER TRANSMISSION LTD Vs DEPUTY COMMISSIONER OF INCOME TAX, GANDHINAGAR [2023-VIL-1479-ITAT-AHM]. Whether assessee wants to treat this loan as an investment or not does not matter so far as determination of arm's length price of this loan is concerned; what really matters is whether such a loan transaction would have taken place, in an arm's length situation, without any interest being charged in respect of the same.

What really matters is whether such a loan transaction would have taken place, in an arm's length situation, without any interest being charged in respect of the same.

9. Functionality for processing of electronically filed valid returns (upto AY 2017-18) having refund claims which were not processed within the time allowed u/s 143(1) due to some technical or others reasons

By virtue of Order F. No. 225/98/2020-ITA-II, dated 30-09-2021, the CBDT directed that all validly filed returns up to Assessment Year 2017-18 bearing refund claims could be processed until 30-11-2021. In view of pending taxpayer grievances related to the issue of refund, the CBDT has decided to extend this time frame further. As a result, such ITRs can now be processed until 31-01-2024. For the ease of making reference to DGIT (Systems) by Pr. CIT/CIT, a screen has been made available in the ITBA's ITR Processing Module named "Enablement u/s 119. Assesses may note that in each such case, the processing rights will be enabled by the ITBA team and subsequently, the processing action has to be performed by the respective Assessing Officer.

Pre-Conditions for such process is as follows:

(i) The ITR should be –

- o for AY upto AY 2017-18
- o a valid ITR
- o electronically filed
- o filed within permitted time limit u/s 139, 142(1) or 119 of the Act.

(ii) Assessee has claimed refund in return of income.

(iii) On computation, the resultant outcome is refund. (iv) The returns of income should not have remained unprocessed due to any reason attributable to the concerned assessee. (v) The returns of income should not be under Scrutiny assessment.

10. Half Yearly Format, Procedure and Guidelines for submission of Statement of Financial Transaction (SFT) for Mutual Fund Transactions by Registrar & Share Transfer Agent and for Depository Transactions

In 2003, the 'Annual Information Return (AIR)' was introduced under Section 285BA of the Income Tax Act. It was later repealed by the Finance Act of 2014, which renamed it 'duty to produce a statement of financial transaction or reportable account'. Filers must provide a statement of financial transaction or reportable account for their defined financial transactions. The government had updated Form 26AS as of June 2020 to include specified transactions in the Statement of Financial Transactions (SFT). If such transactions occur in the fiscal year, they will be shown in "Part E" of the 26AS. As a result, taxpayers can file an SFT transaction in Form 26AS by completing Form 61A. It allows the IT department to keep track of transactions and prevent illicit activity.

Corrigendum to Notification No.4 of 2021 "Format, Procedure and Guidelines for submission of Statement of Financial Transaction (SFT) for Mutual Fund Transactions by Registrar & Share Transfer Agent" provides that from 1st April 2023 filing of SFT will be on half yearly basis (earlier it was on Quarterly basis) – Due date to file is 31st October for first half and 30th April for second half year.

Corrigendum to Notification No.3. of 2021 "Format, Procedure and Guidelines for submission of SFT for Depository Transactions" provides that from 1st April 2023 filing of SFT will be on half yearly basis (earlier it was on Quarterly basis). Due date to file is 31st October for first half and 30th April for second half year. The Estimated Sale and Purchase Consideration should be determined on Weighted Average Price (earlier it was end of day price)

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