Direct Tax Vista

Your weekly Direct Tax recap

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1. CBDT issues order giving effect to the Budget proposal of remitting petty tax demands

In the Interim Budget 2024-25, The Finance Minister proposed to withdraw direct tax demands up to INR 25000 pertaining to the period up to tax year 2009-10 and up to INR 10000 for tax years 2010-11 to 2014-15. Vide Order F. No. 375/02/2023-IT-Budget dated 13th February, 2024 the CBDT has implemented the proposal on remission or extinguishment of small tax demands outstanding as on 31 January 2024 under the Income Tax Act 1961 (ITA) or Wealth Tax Act, 1957 or Gift Tax Act 1958. However, as always the actual scheme has certain surprises, additions, deletions and modifications. The salient features of the scheme are as follows –

A. The outstanding as on January 31, 2024 will be considered as follows :-

Assessment Year/s (A.Y.) to which the entries of outstanding tax demands as on January 31, 2024 pertain	Monetary limit of entries of outstanding tax demands which are to be remitted and extinguished (in Rupees)
(1)	(2)
Upto A.Y. 2010-11	each demand entry upto Rs. 25,000/-
A.Y. 2011-12 to A.Y. 2015-16	each demand entry upto Rs. 10,000/-

B. Now the surprise elements - The remission and extinguishment of above outstanding tax demand shall be subject to the maximum ceiling of Rs. 1,00,000/- for any specific taxpayer/ assessee for the demand entries consisting of tax demands under Income-tax Act, 1961 or corresponding provisions of Wealth-tax Act, 1957 or Gift-tax Act, 1958; stand alone Interest, penalty, fee, cess or surcharge thereon under various provisions of the Income-tax Act, 1961 or corresponding provisions, if any, of Wealth-tax Act, 1957 or Gift-tax Act, 1958.

However, where tax demands meet remission and extinguishment, interest need not be considered for the calculation of the ceiling limit.

C. No TDS or TCS demands under Income Tax shall be considered in this scheme.

D. The scheme shall be implemented by Centralized Processing Centre (CPC) preferably within two months.

E. Remission/extinguishment of demand will be undertaken in a chronological manner for the tax years and fraction of demand shall be ignored.

F. Withdrawal/remission of tax demands under this Order will not give any right to the taxpayers to claim credit or refund of waived amount and will not grant immunity from any ongoing litigation.

2. Salaries of NRIs going for job overseas is not taxable.. in the same way as salaries of expats are not taxable in their home countries

The Income Tax Department plays hot and cold at the same time in the matter of Non-Residents moving out of their own countries for being employed in another Country. They wish to tax in India, expatriates who become residents of India on the income earned by them from all over the world. On the other hand, they also wish to tax salaried Indian Non-Residents who are deputed to work outside India by holding that since these individuals are employed by Indian Companies, so their salaries will be taxed in India as the salaries are received in Indian Bank Accounts.

Under the Indian tax laws, the tax incidence arises on the basis of residential status, which in turn depends on the number of days stayed in India. A tax resident of India is subject to tax on his worldwide income.

However, a non-resident is subject to tax in India only under two situations, i.e.

(i) income accrued in India and

(ii) “income received” in India.

Hence, in case of non-resident, income is considered as taxable in India even if it is “received” in India (though employment done abroad).

The important point here is that the terms “income received” and “amount received” are qualitatively different. The “salary amount” of NRIs is received in India incase of NRIs but the “salary income” is received outside India. Such employee had the lawful right to receive salary outside India. The salary income is at the employee’s disposal outside India and he merely exercises his right to “receive the amount” or “transfer the amount” to India. This was the decision of the ITAT Delhi in the case of Devi Dayal.

The field authorities also try to dispute the taxability of NRI salaries on account of the following-

1. Non-furnishing of Tax Residency Certificate (TRC) of the Country of employment
2. Non-furnishing of proof of payment of taxes in the Country of employment

Hence, to avoid disputes at the field formation level we suggest the following -

1. The Employee agreements should be properly structured. These agreements may bring out the point that the salary for services rendered overseas is being credited to a bank account in India, at the employee request for the sake of convenience.

It may be a better option to pay the salaries in the foreign bank account of the employee itself.

2. While in these cases Tax Residency Certificate (TRC) of the Country of employment is not required as there is no DTAA benefit being claimed, but the income itself is exempt; However, it is advisable to have a TRC and produce before the Indian Tax Authorities to avoid disputes at the field formation level.

3. Plea of defect in notice taken first time in the High Court and not earlier is an empty plea

The adjudicating stage as well as the first and second appeal stage has to be handled effectively incase a matter has to be successfully be argued in High Court. Where AO completed assessment under Section 143(3) of the Act by making an addition levying a penalty under Section 271(1)(c) of the Income Tax Act, and in entire adjudication the assessee participated and the assessment was concluded; even appeals were concluded; at the High Court stage an argument of defect in the notice cannot sustain. The legal issue was answered against the appellant assessee in the case of VEENA ESTATE PVT LTD Vs COMMISSIONER OF INCOME-TAX [2024-VIL-29-BOM-DT]

Section 271(1)(c) cases are argued on the ground of defective notice due to non-stike off of the respective option. However, when the assessee never raised a plea earlier that the assessee did not understand such notice issued to him and/ or acquiesced and conceded in the adjudication of such notice, without any plea of prejudice being taken at any point of time, then in such circumstances, the assessee cannot take a plea before the High Court calling upon it to take a view that although no prejudice on such count was earlier felt and suffered, merely because it is now technically noticed that there was a defect in the notice by non striking of the applicable option, it should be deemed to be presumed that a prejudice was caused to the assessee and therefore, on such count, the penalty proceedings be declared illegal.

4. Wrong return filed due to exceptional circumstances may be rectified during assessment

The compassionate face of judiciary is also visible in some tax cases. Hence where a business woman submits her non-accounting/ taxation background, the Courts do understand the matter. In the case of MONIKA CHAKARVARTY Vs DCIT CIRCLE, KOTA [2024-VIL-252-ITAT-JAI], The AO invoked Section 69A for unexplained money received in the bank vide Cash deposits. However, it was considered by The ITAT that during year under consideration, assessee derived income from retail store of medicines managed by assessee herself after death of her husband with assistance

of employees of shop. The assessee submitted details showing summary of month wise sales and cash on hand. However, the accountant made a mistake and deposited cash of their sister concern in the assesse's bank account. Return of income was filed by the consultant, who relied on information given by the same accountant. Assessee was unaware and totally relied on experts.

The AO was thus directed to compute total credit of cash deposited into bank account of assessee viz a viz with turnover with evidence, verify correct turnover based on bank statement and other supporting evidence, related ledger for purchase, sale and CA certificate.

5. For issuance of Low TDS Certificate, AO cannot see profitability of assessee; But has to rely on 4 principles of Rule 28AA

Rule 28AA of Income Tax Rules for Certificate for deduction at lower rates or no deduction of tax from income other than dividends specifies, interalia as follows -

> *28AA. (1) Where the Assessing Officer, on an application made by a person under sub-rule (1) of rule 28 is satisfied that existing and estimated tax liability of a person justifies the deduction of tax at lower rate or no deduction of tax, as the case may be, the Assessing Officer shall issue a certificate in accordance with the provisions of sub-section (1) of section 197 for deduction of tax at such lower rate or no deduction of tax.*
>
> *(2) The existing and estimated liability referred to in sub-rule (1) shall be determined by the Assessing Officer after taking into consideration the following:-*
> *(i) tax payable on estimated income of the previous year relevant to the assessment year;*
> *(ii) tax payable on the assessed or returned 3[or estimated income, as the case may be, of last four] previous years;*
> *(iii) existing liability under the Income-tax Act,1961 and Wealth-tax Act,1957;*

(iv) advance tax payment 4[tax deducted at source and tax collected at source] for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28;

Hence, Under Rule 28AA of The Income Tax Rules, it clear that the 'satisfaction' needs to be recorded/determined by A.O. after taking into consideration the four factors mentioned in sub-rule (2) of Rule 28- AA. Thus, it is not the subjective satisfaction of A.O., but an objective satisfaction which must be based on Clauses (i), (ii), (iii) and (iv) of sub-rule (2) of Rule 28 AA.

Thus for low TDS Certificate, the AO is competent only to examine the aspect of TDS and had no authority, jurisdiction and competence to look into the aspect of net profit which is within the province of jurisdictional Assessing Officer as was held in the case of GOEL CARGO PRIVATE LIMITED Vs COMMISSIONER OF INCOME TAX, BHOPAL [2024-VIL-28-MP-DT]

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