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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17,2017-18, and 2018- 19 and Form No.9A and Form No. 10.-Reg.

- Representations have been received seeking condonation of delay in filing Return of Income by the Charitable institutions for the Assessment Year 2016- 17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay U/S 11 9(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in fi ling of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.20 16, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.
- Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section I 19(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed , and the Return of Income has been fi led on or before 31 S1 March of the respective assessment years i.e. Assessment Years 20 16- 17, 20 17- 18 and 2018- 19, the Commissioners of Income-tax (Exemptions) arc authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.
- For all other application for condonation of delay not mentioned above, the power of condonation of delay u/s I 19(2)(b) of the Act wi II continue with the respective authorities as per the extant Rules and Practice.

  (Circular No.6/2020, dated 19th February, 2020)

Procedure of PAN allotment through Common Application Form (CAF) along with registration of Foreign Portfolio Investors (FPIs) with SEBI under Department of Economic Affairs and KYC for opening Bank and Demat Account.

- Proviso to sub-rule (1) to rule 114 of Income Tax Rules, 1962 notified vide notification G.S.R. No. I 17(E) dated 9/02/2017, states that:
  "an applicant may apply for allotment of permanent account number through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income Tax (Systems) or Director General of Income-tax (Systems) shall specify the classes of persons, forms and format along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of Permanent Account Number (PAN)".
- A Common Application Form (CAF) for the purpose of registration, opening of bank and demat accounts and application for Permanent Account Number (PAN) has been notified for the Foreign Portfolio Investors (FPIs) in India by the Ministry of Finance, Department of Economic Affairs (SEBI) vide notification F. No. 411 5/2016-ECB, dated 27101 /2020.

  (Notification No.11/2020, dated 07th February, 2020)

Sub-section (2) of Section 139AA read with Section 295 of the Income-tax Act, 1961

- In the Income-tax Rules, 1962, after rule 114AA, the following rule shall be inserted, namely:-
  "114AAA. Manner of making permanent account number inoperative
  - Where a person, who has been allotted the permanent account number as on the 1st day of July, 2017 and is required to intimate his Aadhaar number under sub-section (2) of section 139AA, has failed to intimate the same on or before the 31st day of March, 2020, the permanent account number of such person shall become inoperative immediately after the said date for the purposes of furnishing, intimating or quoting under the Act.
  - Where a person, whose permanent account number has become inoperative under sub-rule (1), is required to furnish, intimate or quote his permanent account number under the Act, it shall be deemed that he has not furnished, intimated or quoted the permanent account number, as the case may be, in accordance with the provisions of the Act, and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number

- Where the person referred to in sub-rule (1) has intimated his Aadhaar number under sub-section (2) of section 139AA after the 31st day of March, 2020, his permanent account number shall become operative from the date of intimation of Aadhaar number for the purposes of furnishing, intimating or quoting under the Act and provisions of sub-rule (2) shall not be applicable from such date of intimation.
- The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the formats and standards along with the procedure for verifying the operational status of permanent account number under sub-rule (1) and sub-rule (2).”

  (Notification No.11/2020/F.No.370149/166/2019-TPL, dated 13th February, 2020)

Case laws

B. Kasi Viswanathan vs. Income Tax officer, Non Corporate Ward 15(2), Chennai, February 11, 2020

Facts:

- Section 54, read with section 148, of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Reassessment) - Assessment year 2009-10
- Assessee had claimed long-term capital gain on transfer of house property in his return-filed for relevant year
- Before assessment was completed, assessee was called upon to furnish evidence in support of his claim for deduction under section 54 based on which claim of assessee for long-term capital gains had been allowed
- Thereafter assessment in case of assessee was sought to be reopened on ground that assessee had wrongly claimed long-term capital gains
- However, there was true and full disclosure of all material by assessee based on which claim of assessee for long-term capital gains had been allowed in assessment order
- Whether therefore, Assessing Officer could not have had a re-look into said issue pursuant to notice issued under section 148 - Held, yes [In favour of assessee]

Issue:

Where claim of assessee for long-term capital gains had been allowed in assessment order based on true and full disclosure of all material by assessee, Assessing Officer could not have had a re-look into said issue pursuant to notice issued under section 148

Held:

- The respondent cannot have a re-look into the issue arising out of the claim of the petitioner for Long-Term Capital Gains which was allowed in the assessment order passed on 29-10-2011 as there was true and full disclosure of all material required for assessment by the petitioner for claiming deduction;
- Therefore, the proposal to re-determine the taxable income and the tax payable by the petitioner for the reasons stated in the impugned communication is unsustainable.;
- At the same time, while passing final order under section 147 of the Income-tax Act, 1961, the respondent can examine any other aspect for escaped

assessment of tax in the light of Explanation 3 to section 147 of the Income-tax Act, 1961.

- While passing such order, the respondent shall not disturb the deduction allowed under section 54 of the Income-tax Act, 1961 in the assessment order dated 29-10-2011.
- Since the dispute pertains to the assessment year 2009-10, the respondent is hereby directed to pass appropriate order within a period of thirty days from date of receipt of a copy of this order without disturbing the claim of the petitioner for Long-Term Capital Gains allowed under section 54 of the Income-tax Act, 1961.
- No cost.
- Consequently, connected Miscellaneous Petitions are closed..

Suresh Chand Gupta.vs Principal Commissioner of Income-tax February 10, 2020

Facts:

- Section 56, read with section 147, of the Income-tax Act, 1961 - Income from other sources - Chargeable as (Reassessment)
- Assessing Officer worked out profit on basis of contract and sub-contract income
- On account of oversight/mistake, he failed to add interest income shown in books as other income
- Subsequently, audit objections were raised by audit party
- Invoking section 147/148, Assessing Officer, reassessed 'interest income' of appellant - Whether since in Profit and Loss Account, assessee himself had shown interest on FDRs as 'other income', question of double addition would not arise on reassessment - Held, yes
- Whether thus, reassessment was just and proper - Held, yes [In favour of revenue]

Issue:

Where Assessing Officer worked out profit on basis of contract/sub-contract income but failed to add interest income shown in books as other income, subsequently, on basis of audit objection, Assessing Officer was justified in invoking section 147/148 and reassessing 'interest income'

Held:

- This appeal under section 260-A of the Income-tax Act, 1961 (as amended till date), is in respect of a judgment and order dated 3-9-2019 passed by the learned Income-tax Appellate Tribunal, Agra Bench, Agra in Suresh Chand Gupta v. Dy. CIT [IT Appeal No. 284 (Agra) 2017]. The appellant has framed two substantial questions of law, which read as follows:—
  i. "Whether the ITAT was legally justified in upholding the action of Assessing Officer reassessing the "interest income" of the appellant u/s 147/148 of the Act, when A.O. admittedly on account of oversight/mistake failed to assess the interest income which was duly disclosed in the books of accounts of the appellant?"
  ii. ("Whether on the basis of audit objection raised by the revenue audit party reassessment is permissible u/s 147/148 of the Act being change of opinion when the interest income of FDR's has been duly disclosed in the audited Profit & Loss A/c and Balance sheet filed along with the return of income?"
- The provision of law which is relevant in the facts of the present case, is section 147 of the Income-tax Act, 1961, as it deals with income escaping assessement. This particular provision of law has since undergone several amendments whereby several provisos have been introduced. The Assessing Officer, being the Deputy Commissioner of Income Tax-6, New Circle-2(3)(1) Jhansi, in the facts of the instant case made the following observations:-
  "From the perusal of above computation it is clear that the Assessing Officer has work out profit on the basis of contract income and sub contract income and not added interest income by mistake. From the perusal of audited balance sheet of the assessee it is clear that the assessee himself shown Rs. 47,34,000/- as other income in schedule 12 of audited balance sheet. The case laws is not applicable in the case of assessee because the assessee himself shown interest on FDR's as other income and fact of the case is deferent. Therefore, no question arise of double addition in this case. Considering the above discussion the reply of the assessee is not acceptable and Rs. 47,34,000/- is added in the income of the assessee."
- The question as to whether the learned Tribunal was legally justified in upholding the action of the Assessing Officer reassessing the "interest income" of the appellant under sections 147/148 of the Income-tax Act, 1961, has to be answered in the affirmative notwithstanding the fact that the Assessing Officer, admittedly, on account of oversight/mistake failed to assess the interest income since there was no question of double addition which had arisen in this case.

- A judgment of the Hon'ble Supreme Court which was referred to and relied upon by the learned advocate representing the appellant rendered on 3rd February, 1999, in CIT v. Corpn. Bank Ltd. [2002] 122 Taxman 826/254 ITR 791 (SC), has no manner of application at all in the facts of the instant case, since that judgment was rendered prior to the applicable law having undergone several amendments.
- The questions of law, as framed by the appellant, are answered accordingly and the instant appeal, being Income-tax Appeal No. 11 of 2020 is disposed of by affirming the judgment and order dated 3rd September, 2019, passed by the learned Income-tax Appellate Tribunal, Agra Bench, Agra in I.T.A. No. 284/Agra/2017

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC

- Section 92CB of the Act empowers the Central Board of Direct Taxes (Board) for making safe harbour rules (SHR) to which the determination of the arm's length price (ALP) under section 92C or section 92CA of the Act shall be subject to. As per Explanation to said section the term "safe harbour" means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee. This section was inserted in the Act to reduce the number of transfer pricing audits and prolonged disputes especially in case of relatively smaller assessees. Besides reduction of disputes, the SHR provides certainty as well.
- Further, section 92CC of the Act empowers the Board to enter into an advance pricing agreement (APA) with any person, determining the ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person. APA provides tax certainty in determination of ALP for five future years as well as for four earlier years (Rollback).
- SHR provides tax certainty for relatively smaller cases for future years on general terms, while APA provides tax certainty on case to case basis not only for future years but also Rollback years. Both SHR and the APA have been successful in reducing litigation in determination of the ALP.
- It has been represented that the attribution of profits to the PE of a non-resident under clause (i) of sub-section (1) of section 9 of the Act in accordance with rule 10 of the Rules also results in avoidable disputes in a number of cases. In order to provide certainty, the attribution of income in case of a non-resident person to the PE is also required to be clearly covered under the provisions of the SHR and the APA.
- In view of the above, it is proposed to amend section 92CB and section 92CC of the Act to cover determination of attribution to PE within the scope of SHR and APA.
- With respect to section 92CB, the amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

- With respect to section 92CC, the amendment will take effect from 1st April, 2020 and therefore will apply to an APA entered into on or after 1st April, 2020.

Case Laws

AGT International GmbH v. DCIT (ITA No. 7465/Mum/18)

Facts

- The taxpayer, a resident of Switzerland, received payment on account of FTS from an Indian company and offered the same to tax at 10 per cent on gross basis under Article 12(2) of the tax treaty. However, the Indian company deducted tax at 42.024 per cent on the entire amount.
- The Assessing Officer (AO) observed that the services rendered by the taxpayer did not satisfy the criteria under Article 12(4)2 as the role of the taxpayer was only of buying and selling services. The AO held that the taxpayer on account of rendition of services had a PE in India i.e. a Service PE under Article 5(2)(I) of the tax treaty. The AO attributed the FTS under Article 5(2)(I) of the tax treaty. The AO held that the expenditure was allowable on estimated basis at 40 per cent of total revenue and remaining amount was taxable at normal income-tax rates applicable to foreign companies.

Issue:

Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of AGT International GmbH1 (the taxpayer) dealt with the issue of taxability of Fees for Technical Services (FTS) at a beneficial rate under Article 12(2) v/s. taxability under Service Permanent Establishment (PE) article on net basis under the India-Switzerland tax treaty (tax treaty). The Tribunal held that FTS is to be taxed on gross basis under the Protocol to the India-Switzerland tax treaty even though the taxpayer company had a Service PE in India.

Held

- On a combined reading of the provision of Article 5(2)(l) read with the related Protocol clause3 it was observed that the Service PE being triggered on account of rendition of services by a Swiss entity in India, or vice versa, can never put the taxpayer at a disadvantageous position in so far as the tax liability in source jurisdiction is concerned.
- Unless the taxpayer has a lower tax liability on the taxability of PE on net basis under Article 7 vis-à-vis taxability of FTS on gross basis under Article 12(2) of the tax treaty, the PE was in fact tax neutral.

- Therefore, the issue cannot turn in favour of the tax department on account of Service PE triggered by the rendition of services. The Protocol provides the phrase 'at the request of the enterprise' thus when the taxpayer pleads for the taxability under Article 12(2), it's implicit that the taxpayer wants to be taxed at that rate. Accordingly, the receipts were taxed as FTS at 10 per cent on gross basis under Article 12(2) of the tax treaty.

Refex Industries Limited v/s Madras High Court [TS-89-HC-2020(MAD)-NT]

Facts

- For the period commencing from August 2017 to March 2018, the petitioner had belatedly filed its GST returns. Demand notices were issued by the revenue to the Banks seeking to recover arrears of interest from the account balance of the petitioner.
- The petitioner objected, stating that they had sufficient input tax credit available with the revenue and thus interest could be demanded, if at all, only on the cash components of the tax admitted and paid after the due date.
- Petitioner accordingly had filed writ petition before the Madras High Court against the coercive recovery of the interest

Issue:

Madras High Court has recently held1 that the levy of interest on delayed payment of GST liability is purely compensatory in nature and accordingly is liable to be charged only on the net cash payment and not on the gross liability (before tax credit).

Held

- As per section 50 of the Central Goods and Services Tax Act, 2017, levy of interest on belated payment of tax is 'automatic' as it is intended to compensate the revenue for the remittance of tax paid beyond the time frame permitted under the law.
- The use of the word 'delayed' in section 50, connotes a situation of deprival, where the State has been deprived of the funds representing the tax component till such time the return is filed accompanied by the remittance of tax. The section specifically intends to apply to a state of deprival and cannot apply in a situation where the State possesses sufficient fund in the form of tax credits.

- Thus, the Court held that, the proper application of section 50 is one where the interest is levied only on the cash payment, which was paid late, but not on ITC available all the while with the department to the credit of the assessee.
- Further, the Court observed that proviso2 inserted in section 50(1), provides for payment of interest only on that part of the tax liability which has to be paid in cash, was inserted with the intention to correct the anomaly in the provision as it existed prior to such insertion. Thus, the Court held that the provision is to be read as clarificatory and operative retrospectively.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Interest Subvention Scheme for MSMEs

- Reference to the operational guidelines for the captioned scheme contained in circular on 'Interest Subvention Scheme for MSMEs' issued vide FIDD.CO.MSME.BC.No.14/06.02.031/2018-19 dated February 21, 2019.
- In this regard, it has been decided by the Government of India to bring, inter alia, following modifications in the operational guidelines:
    i. Submission of statutory auditor certificate by June 30, 2020 and in the meantime, settle claims based on internal / concurrent auditor certificate.
    ii. Acceptance of claims in multiple lots for a given half year by eligible institutions.
    iii. Requirement of Udyog Aadhar Number (UAN) may be dispensed with for units eligible for GST. Unit not required to obtain GST, may either submit Income Tax Permanent Account Number (PAN) or their loan account must be categorized as MSME by the concerned bank.
    iv. Allow trading activities also without Udyog Aadhar Number (UAN)
- Further, with the trading activity also eligible for interest subvention as indicated at (iv) above, the 'Format of Certificate for claiming Subsidy' i.e. Annex I of the above referred circular has been revised. Banks are advised to submit claims to SIDBI as per the revised format.

[RBI/2019-20/155 FIDD.CO.MSME.BC.No.17/06.02.031/2019-20, dated on 5th February 2020]

Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances

- Reference to the circular DBR.No.BP.BC.18/21.04.048/2018-19 dated January 1, 2019. It has been decided to extend the one-time restructuring of MSME advances permitted in terms of the aforesaid circular. Accordingly, a one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification is permitted, subject to the following conditions:.

- The aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower does not exceed ₹25 crore as on January 1, 2020.
- The borrower's account was in default but was a 'standard asset' as on January 1, 2020 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring.
- The restructuring of the borrower account is implemented on or before December 31, 2020.
- The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on January 1, 2020.:

- It is clarified that accounts which have already been restructured in terms of the circular dated January 1, 2019 shall be ineligible for restructuring under this circular.

[RBI/2019-20/160, DOR.No.BP.BC.34/21.04.048/2019-20 11th February, 2020]

COMPANY LAW

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020

- In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (hereinafter referred to as the principal rules), in rule 3, after sub-rule (4), the following sub-rules shall be inserted, namely: -

  "(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

  (6) An application of arrangement for takeover offer shall contain:_

  a. the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors: -

  i. the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

  ii. the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.

  b. details of a bank account, to be opened separately, by the member wherein a sum of amount not Iess than one-half of total consideration of the takeover offer is deposited.".

  [F.No. 2/31lCAA/2013-CL.V, dated 3rd February, 2020]

ACCOUNTS & AUDIT

Whether the Arrangement is in Nature of Operating Lease or Finance Lease

EAC of ICAI has issued an opinion that for deciding whether the arrangement is in nature of operating or finance lease, consideration should be given to substance over legal form. Merely inclusion of cancellation / termination clause in the agreement to ensure satisfactory performance of leased asset (X-Ray baggage machine) supplied by vendor is protective in nature and it cannot be said that the risk of asset remains with the vendor. EAC opinioned that lease arrangement should be classified as finance lease where, in substance, risk and reward of leased asset is with the lessee.

GOODS AND SERVICE TAX

Amend the CGST Rules, 2017 to prescribe the value of Lottery.

- In the Central Goods and Services Tax Rules, 2017, with effect from the 1st March, 2020, in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-.

  "(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher

Explanation:-

For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010."

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