NANUBHAI DESAI & CO.

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

1) Amount of Remuneration prescribed u/s 9A(3)(m) of the Income-tax Act, 1961:

CBDT vide Circular No. 1 dated 15th January 2021, clarified that remuneration to be paid by an eligible investment fund u/s 9A (activities of which shall not constitute business connection in India) to an eligible fund manager in respect of fund management activity undertaken by him on its behalf shall not be less than the prescribed amount as per rule 10V(12). Prior board approval would be required in case remuneration is less than the prescribed amount. However, for FY 2019-20 and 2020-21, no prior approval is required if the amount of remuneration is at arm's length. For FY 2021-22, where the remuneration is less than prescribed amount, the application for approval of such lower remuneration be filed before 1st February 2021.

(Circular No. 1/2021/F.No. 370142/2/2021-TPL, dated 15th January, 2021)

2) CBDT launches e-portal for filing complaints regarding tax evasion/Benami Properties/Foreign Undisclosed Assets:

CBDT launches e-portal for filing of complaints regarding tax evasions, foreign undisclosed assets, benami properties etc. by persons whether or not having PAN/Aadhaar holders. After an OTP based validation process (mobile and/or email), the complainant can file complaints in respect of aforesaid violations under the respective Acts and regulations. in three separate forms designed for the purpose.

3) Central Government makes the Faceless Penalty Scheme (FPS), 2021:

Central Government vide Notification dated 12th January 2021 specified the Faceless Penalty Scheme, 2021 which shall come into force on the date of its publication in the Official Gazette The scheme will be centrally managed through the National Faceless Penalty Center (NFPC) and Regional Faceless Penalty Centers (RFPC), penalty units, penalty review units may also be set up. Various other aspects like procedural, rectification proceedings, appellate proceedings authentication and delivery of electronic record etc. has been specified under this notification.

Case laws

Penalty u/s 271AAB (penalty on undisclosed income) cannot be levied if no search u/s 132 is done (Ashok B Sureban Vs ACIT (ITAT Bangalore)

Facts:

The facts of the case are that for the two assessment years, i.e AY 2012-13 & AY 2013-14, assessment was completed u/s. 143(3) r.w.s. 153C of the Income-tax Act,1961 [the Act]. Later, the AO levied penalty u/s. 271AAB of the Act on account of undisclosed income declared by the assessee during the post survey proceedings on 6.8.2015. Against this, the assessee went in appeal before the CIT(Appeals). The CIT(Appeals) confirmed the levy of the penalty u/s. 271AAB of the Act. Aggrieved, the assessee is in appeal.

Issue:

Whether Penalty under section 271AAB can be levied even if no search is conducted u/s 132 of the Income Tax Act?

Held:

Decision by the Tribunal:

- The position was that no search had taken place in the case of the assessee as per section 132 of the Act. Section 271AAB(1)(a) however simultaneously provides concessional treatment in the matter of penalty under s.271AAB where the assessee admits the undisclosed income in a statement under sub-section 4 of Section 132 of the Act subject to fulfillment of other conditions with which we are presently not concerned with. Therefore, it is manifest that applicability of Section 271AAB is integrally connected to search under s.132 of the Act.
- Hence, the levy of penalty u/s. 271AAB of the Act in these two assessment years in the case of assessee is not at all justified.

Section 68 addition cannot be levied merely for low income of creditor (Carissa Investment (P) Ltd. Vs ACIT (ITAT Delhi)

Facts:

- The facts of the case are that the assessee-company has filed its return of income on 30.10.2007 declaring income of Rs.27,78,790/- in the computation of income. The assessee-company is engaged in the business of Investment and Trading in Shares. The A.O. noted that assessee-company has taken loan from 11 parties in assessment year under appeal.
- The A.O. issued notices under section 133(6) of the Income Tax Act to all the parties requiring them to furnish copy of the bank statements, PAN etc., The A.O. noted that notices could not be served upon M/s. Alter Investment Pvt. Ltd., [Rs.36,19,25,209/-] and M/s. Ilac Investment Pvt. Ltd., [Rs.12,29,99,000/-hereinafter mentioned as creditors]. The assessee-company submitted copy of the ledger account, confirmations by the parties along with their ITR and other details before A.O. The A.O. without making further enquiry considered them as unexplained credits and made the addition in respect of both the creditors.

Issue:

Whether Section 68 addition can be made merely for Low Income of Creditor?

Held:

Held by the Tribunal:

- Considering the totality of the facts and circumstances of the case, it is clear that in the ledger account of both the creditors there are loans given to the assessee-company as well as assessee paid back the amounts to them.
- Bank statements are part of the record which also did not show if any cash have been deposited in the bank accounts of the creditors for giving loan to the assessee-company. Their bank accounts clearly show that both the creditors have sufficient funds in their bank account and all the transactions are carried-out through banking channel only.
- Thus, the initial burden upon the assessee-company to prove the creditworthiness of the creditors and genuineness of the transaction has been established in the matter and burden upon assessee-company have been discharged. It may also be noted that A.O/CIT(A) did not do anything on the

documentary evidences produced on record and no further enquiry have been made into the matter.

- Since the A.O. accepted the creditworthiness and genuineness of the transaction with the same creditors in subsequent assessment year as well, it stand proved on record that there were no justification for the authorities below to make any addition against the assessee-company.
- In view of the above discussion, we set aside the orders of the authorities below and delete the entire addition.

An independent building having multiple residential units can be treated as one residential house for section 54F (Halesh K.C. Vs ITO (ITAT Bangalore)

Facts:

- The assessee along with other family members had sold an immovable property located at Bommanahalli, Bangalore on 20-08-2015. The assessee worked out long term capital gain of Rs.1,50,20,000/- and claimed deduction of entire amount u/s 54F of the Act. The AO noticed that the assessee had received a building by way of gift on 13.8.2015 and the said building consisted of ground floor, first floor and second floor.
- The AO also deputed his inspector to physically inspect the property. The Inspector reported that the Ground floor is having a garage and one residential unit; first floor is having two 1BHK flats and second floor is having 2 single (with bath) units. The AO, accordingly, took the view that each of the unit is separate house. Since deduction u/s 54F of the Act is not permitted, if the assessee is having more than one house property, the AO rejected the claim for deduction u/s 54F of the Act.

Issue:

Whether an Independent building having multiple residential units can be treated as 'one residential house' for section 54F?

Held:

Held by the Tribunal:

- An independent building can have a number of residential units and it will not lose the character of "one residential house". Accordingly, we are unable to agree with the view taken by the tax authorities that each floor of the individual house/each portion in a floor is separate house property. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and hold that the house property received by the assessee is "one residential house" only within the meaning of sec.54F of the Act.
- Accordingly, we are of the view that the reasoning given by the AO to reject the claim for deduction u/s 54F is not justified.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

SEBI reduces time for refund of share application money to Investors

Explanatory Memorandum: *In case of non-receipt of minimum subscription, the issuer is mandated to refund all the application monies within a period of "fifteen days" from the closure of the issue.*

Based on various consultations with the market participants it has been decided to reduce the timelines for refund of the moneys to the investors in the above mentioned events to "four days".

(SEBI/HO/CFD/DIL1/CIR/P/2021/47)

Customs Authority for Advance Rulings Regulations 2021

The notification has been issued in exercise of the powers conferred by section 157 read with sub-section (1) of section 28H, sub-section (1) of section 28KA and sub-section (1) of section 28M of the Customs Act, 1962 (52 of 1962) and in supersession of the Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005.

The new Regulation come into force from 4th January 2021.

As per the New Regulation:

- *An application for obtaining an advance ruling is to be made in Form CAAR-1 before the jurisdictional Authority either at Delhi or Mumbai.*

- *The applicant may withdraw his application within two weeks from the date of the application and thereafter only with the leave of the Authority*

- *The Principal Commissioner or Commissioner are authorised to file appeal against the advance ruling in terms of sub-section (1) of section 28KA.*

- *An authorised representative shall appear before the Authority in dress specified for the members of his profession by the competent professional body, if any.*

(No.01/2021-Customs (N.T))

Case Laws

Engineering Analysis Centre of Excellence Private Limited Vs CIT (Supreme Court of India); Civil Appeal Nos. 8733-8734 of 2018; Dated: 02/03/2021

Facts

- The appellant, Engineering Analysis Centre of Excellence Pvt. Ltd. (EAC), is a resident Indian end-user of shrink-wrapped computer software, directly imported from the United States of America. According to the A.O., the payments were in the nature of royalty u/s 9(1)(vi) of the Act, read with Explanation 6 thereto. Accordingly, he disallowed the payments u/s 40(a)(ia) of the Act.
- The AO after applying the article 12(3) of the DTAA between India and USA and upon applying section 9(1)(vi) of the Income Tax Act, 1961 (Act), found that what was in fact transferred in the transaction between the parties was copyright which attracted the payment of royalty and thus, it was required that tax be deducted at source by the Indian importer and end-user, EAC

Issue:

The Appeals are grouped into four categories:

1) The first category deals with cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer
2) The second category of cases deals with resident Indian companies that act as distributors or resellers, by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users
3) The third category concerns cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.
4) The fourth category includes cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

Held

1) As per Sec 195, there is no obligation on the persons mentioned in section 195 of IT Act to deduct tax at source, as the distribution agreement / EULAs in the

facts of these cases do not create any interest or right in such distributors/ end users, which would amount to the use of or right to use any copyright.

2) The amounts paid by resident Indian end users/ distributors to non-resident computer software manufacturers/ suppliers, as consideration for the resale/ use of the payment software thru EULAs/ agreements, is not the payment of royalty for the use of copyright in the computer software.

3) The same does not give rise to any income taxable in India.

4) The persons referred in section 195 are not liable to deduct any TDS u/s 195 of IT Act.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Amendments to Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules)

S.O. 4441 (E).—In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in rule 6, in clause (a), after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that a Multilateral Bank or Fund, of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India."

COMPANY LAW

Companies (Account) Amendment Rules, 2021.

- MCA has vide its notification dated 24.03.2021 (Companies (Accounts) Amendment Rules, 2021) notifies that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.
- Vide notification dated 25.01.2021, the Companies (Incorporation) Amendment Rules, 2021 has been notified to amend Rule 41 of Companies (Incorporation) Rules, 2014 which relates to Application under section 14 of the Companies Act, 2013 for conversion of public company into private company. Through the said amendment, the provision relating to automatic deemed approval after 30 days from the date of hearing, if no order is passed by Regional Director within 30 days from the date of hearing has been removed

Amendment in Companies (Share Capital and Debentures) Amendment Rules, 2021:

- This rule is passed on 11th February 2021
- This rule came into effect from 1st April 2021
- Amendment in Section 62(a)(1), Offer for right issue shall be open at least for 7 days and not exceeding 30 days.

Amendment in Companies (Incorporation) Second Amendment Rules, 2021:

- This rule is passed on 1st February 2021
- This rule came into effect from 1st April 2021
- Proposed Changes in provisions of One Person Company
  1) Process of conversion of One Person Company to another type of Company.
  2) Allow NIR to incorporate OPC in India
  3) Change in definition of resident in India w.e.f. 182 days to 120 days in immediately preceding financial year.
  4) Removal of mandatory conversion of OPC in another type of company on attainment of on a specific limit of turnover.

Amendment in Companies (Incorporation) Third Amendment Rules, 2021:

- This rule is passed on 5th March 2021
- This rule came into effect from 5th March 2021
- It shall be noted that now the stakeholders would be in the position to perform the aadhar authentication for GSTIN registration in Form INC-35 AGILE-PRO.

Further Notifications and changes in the Companies Act 2013:

CBDT issues instructions regarding issue of notices without DIN for reassessment of non-PAN cases.

The instructions issued by the Central Board of Direct Taxes (CBDT) on 26 March 2021 pertaining to reopening of cases by the tax authority in non-PAN cases. Previously the CBDT had issued instructions on 4 March 2021, to the tax officers, specifying certain scenarios which shall be considered for reopening of the last batch of cases in respect of tax years 2012-13 to 2016-17 under the extant regime, prior to the new regime proposed vide Finance Bill, 2021, coming into effect from 1 April 2021. The specified scenarios included, inter alia, cases where there are reports of the Directorate of Income Tax (Investigation) or Directorate of Intelligence & Criminal Investigation, and Cases from Non-filer Management System and other cases as flagged by the Directorate of Income-Tax (Systems) as per risk profiling. In this backdrop, the CBDT has now clarified that non-PAN cases will also fall within the above specified category and can be reopened based on manual notices without a Document Identification Number (DIN).

ACCOUNTS & AUDIT

SEBI issues further relaxations for listed companies amid COVID-19

Extension of timeline for conducting meetings

The Securities and Exchange Board of India (SEBI) through a circular dated 15 January 2021 has further extended relaxations to companies to conduct their Extraordinary General Meeting(EGM) through Video Conferencing (VC) or through other audio-visual means (OAVM) referred as 'Electronic Mode' upto June 30,2021.

Further, vide Circular dated 13 January 2021, MCA has also extended these relaxations to Annual General Meetings (AGMs) of Companies due in the Year 2021(i.e till December 31, 2021)

(SEBI/HO/CFD/CMD2/CIR/P/2021/11)

Rollout of Legal Entity Template With effect from 10th March, 2021 vide Circular dated 10th March, 2021

SEBI through a circular dated 10th March 2021 has directed the Registered Intermediaries (RIs) to ensure that in case any Listed Entity (LE) are accounts opened prior to April 1, 2021, the KYC records are to be uploaded on to CKYCR as and when the updated KYC information is obtained/received from the client.

Further, to ensure that all existing KYC records of individual clients are incrementally uploaded on to CKYCR, RIs shall upload the KYC records pertaining to accounts of individuals opened prior to August 01, 2016, as and when updated KYC information is obtained/received from the client.

Once KYC Identifier is generated by CKYCR, the RIs shall ensure that the same is communicated to the individual/legal entity. The provisions of this circular are not applicable to Foreign Portfolio Investors (FPIs).

(SEBI/HO/MIRSD/DOP/CIR/P/2021/31)

GOODS AND SERVICE TAX

CBIC vide notification 06/2021-CT dated 30th March, 2021 has extended the Dynamic QR code applicability in B2C invoices by a GST registered taxpayer till 1st July 2021. The extension is only for businesses whose aggregate turnover exceeds INR 500 Crore.

Further the The Government of Rajasthan declared INR 1 lakh limit on the e-Way bill under GST with effect from 1st April 2021.

CBIC vide circular no 146/02/2021-GST dated 23rd February, 2021 has waived penalty for non-compliance of the Provisions of Notification No.14/2020 for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021 which was issued requiring Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020.

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