NANUBHAI DESAI & CO.

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

I. CBDT Extends Due Dates for Filing of Income Tax Returns and Various Reports of Audit for The Assessment Year 2021-22 (Section 139, read with section 92E of The Income-Tax Act, 1961)

- The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September, 2021 is further extended to 15th February, 2022

- The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 31st October, 2021 is extended to 15th February, 2022

- The due date of furnishing of Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, is further extended to 15th February, 2022

- The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 30th November, 2021 under sub-section (1) of section 139 of the Act, is further extended to 15th March, 2022.

(Press release dated 11-1-2022)

Case laws

I. Pankaj

vs.

National e-Assessment Centre Income-tax Department, Ministry of Finance, Government of India, Delhi

[2022] 135 taxmann.com 361 (Bombay)

Facts:

- The challenge raised in this writ petition filed under article 226 of the Constitution of India is to the assessment order dated 14-5-2021 pursuant to the scrutiny assessment under E-Assessment Scheme-2019.
- The said order has been passed under section 143(3) read with section 144B of the Income-tax Act, 1961 (for short, 'the said Act') by which the income of the assesse stands assessed.
- Consequent there upon a demand notice has also been issued on the same day in terms of the aforesaid order.

Issue:

Whether where assesse responded to show cause notice much prior to issuance of assessment order under section 144B, but there was no consideration of reply given by it to show cause notice, it was to be concluded that assessment order had been passed without granting proper and meaningful opportunity to assesse to respond to show cause notice

Held:

- The assessment order dated 14-5-2021 has been passed without granting proper and meaningful opportunity to the petitioner to respond to the show-cause notice. It is not in dispute that as per show cause notice dated 10-4-2021 the petitioner was called upon to submit his response by 4.00 p.m. of 13-4-2021.

- An alternate remedy by way of statutory appeal is available to the petitioner. However, in view of the fact that it is apparent that the assessment order has been issued without granting due and proper opportunity to the petitioner

II. Trent Ltd.
v.
Deputy Commissioner of Income-tax

Facts:

- Petitioner is a company engaged in the business of retailing of readymade garments etc. through its chain of stores called 'WESTSIDE'. Petitioner has filed this petition to challenge the issue of notice dated 31st March 2009 under section 148 of the Income-tax Act,1961 ('the Act') for reopening the assessment for Assessment Year 2004-05.
- By the said notice, assessment is sought to be reopened on the allegation that income of petitioner for Assessment Year 2004-05 has escaped assessment.

Issue:

Whether, reopening of assessment on basis of very same material being a clear case of change of opinion was not justified?

Held:

- Typographical error that the figure of Rs. 3.02 lakhs were mentioned instead of Rs. 293.24 lakhs.
- This mistake demonstrates non-application of mind by respondent No. 1 at the time of recording of the reasons for reopening the assessment. Though we do not find the approval under section 151 of the Act in the record and proceedings, we can certainly hazard a guess that even the Approving Authority would not have applied its mind or read the reasons recorded before granting approval. If it had only been read, these errors would have come to light at that stage itself.
- Therefore, for all the aforesaid reasons, we quash the impugned notice dated 31st March 2009 under section 148 of the Act together with order dated 16th October 2009.

INTERNATIONAL TAXATION

Case Laws

I. IN THE ITAT CHENNAI BENCH 'B'

Deputy Commissioner of Income-tax, Circle-2(1), International Taxation, Chennai

Vs.

Petrofac Engineering Services (P.) Ltd

Facts

- The assessee-company was engaged in the business of providing computer aided design and engineering services.
- The Assessing Officer noted that the assessee had not withheld TDS on certain remittances made to non-residents under section 195. A notice under section 201(1) and 201(1A) was issued to the assessee seeking details of payment towards purchase of software products to foreign company.
- The assessee explained that nature of software purchased by the assessee did not give rise to royalty income for the vendor as per definition in tax treaty between India and USA and further, it was purchase of copyrighted article and not copyright itself.
- Assessing Officer however, was not convinced with explanation furnished by the assessee and according to him, payments made by the assessee to various non-resident vendors for purchase of software and rendering services was in the nature of royalty, as per provisions of section 9(1)(vi) and tax treaty between respective countries and thus, he held assessee to be an assessee in default under section 201(1) & 201(1A) and computed short deduction of tax and interest for both assessment years.
- The Commissioner (Appeals) held that payments made by the assessee to various non-resident vendors for purchase of copyrighted article did not give rise to any royalty within meaning of section 9(1)(vi) and tax treaty and thus, the assessee need not deduct TDS under section 195.

Issue:

Whether amount paid by assesse Indian end-users/distributors to non-resident computer software manufacturer/suppliers as consideration for resale/use of computer software through EULAs/distribution agreement was not payment of royalty for use of copyright in computer software and, thus, said payment did not give rise to any income taxable in India

Held

- Supreme Court in series of cases and after considering various facts and also by analyzing number of decisions held that amount paid by resident Indian end-users/distributors to non-resident computer software manufacturer/suppliers as consideration for resale/use of computer software through EULAs/distribution agreement is not payment of royalty for use of copyright in computer software and, thus, said payment does not give rise to any income taxable in India

- In this view of the matter and by respectfully following the decision of the Supreme Court in the case of Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT payment made by the assessee to various non-resident vendors for purchase of copyrighted article does not give rise to any royalty as defined under section 9(1)(vi) and tax treaty and thus, the assessee is not required to deduct TDS as required under section 195 on such payment and consequently, assessee cannot be held to be an assessee in default under section 201(1) & 201(1A). [Para 10]

[2022] 135 taxmann.com 221 (Chennai - Trib.)

II. IN THE ITAT DELHI BENCH 'D'

Chander Mohan Lall

vs.

Assistant Commissioner of Income-tax

Facts:

- The assessee Advocate had claimed deduction on account of payment made to various persons/entities outside India towards professional/technical fee. He submitted that since payees were resident of countries with whom India had entered into Double Taxation Avoidance Agreements (DTAA), payees would be protected under the beneficial provisions of respective DTAAs. Hence, payments made to them were not subject to tax in India.
- Assessing Officer observed that payment was made to some of the persons/entities who were resident of countries with whom India had not entered into any tax treaty. Further, he observed, even in respect of some of the entities/persons, who were resident in countries with whom India had entered into DTAA, no Tax Residency Certificates had been furnished by assessee. Therefore, he held that payment made to non-residents was to be disallowed under section 40(a)(i) for non-deduction of tax at source.
- The assessee contested the aforesaid disallowance before the Commissioner (Appeals), however, he was unsuccessful.
- On appeal: the assessee submitted that said paid consisted of payment made towards reimbursement of amount recovered on behalf of the client in litigation, payment of official fee, payment for publication and trade fair services and said payment had to be deleted at the threshold itself as such payments did not attract the provisions of section 195

. ***Issue:***

Assesse-advocate had claimed deduction on account of payment made to various persons/entities outside India towards professional/technical fee and he claimed that since payees were resident of countries with whom India had entered into DTAA, payments made to them were not subject to tax in India

Held:

- Payment is towards remittance of amount recovered in court proceeding on behalf of the client in litigation. Further, a payment of Rs. 2,56,973/- was made towards official fee for international application. Similarly, amount of Rs. 4,15,484/- was paid to two entities in United Kingdom and Maldives for publication and trade fair services. These payments mainly were in the nature of reimbursement and payment made for official purpose and trade fair services cannot come within the purview of either professional or technical

services. Therefore, such payments aggregating to Rs. 17,41,450/- not being in the nature of income chargeable to tax in India in terms of section 195, there is no obligation on the assessee to deduct tax at source on such payment. Therefore, the disallowance of the aforesaid amount is deleted

- It is a fact that Indian/overseas clients engage the assessee for availing certain services. In turn, assessee engages the foreign attorneys to perform certain services which are required to be performed in foreign jurisdictions. There is no privity of contract between the assessee's clients and foreign attorneys
- In any case of the matter, the departmental authorities have disallowed a part of the expenditure for the only reason that assessee failed to furnish the TRC of the payees. The departmental authorities have not at all examined the taxability of payments under the applicable DTAAs
- Be that as it may, on overall analysis of facts and applicable statutory provisions the payments made to foreign attorneys are not chargeable to tax under the provisions in terms of section 195. Therefore, the assessee was not required to withhold tax on the payments made. Accordingly, the disallowance made under section 40(a)(i) is to be deleted

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Credit Guarantee Scheme for Subordinate Debt(CGSSD) extended upto 31.03.2023

Delhi Government announced creation of 'Distressed Assets Fund- - Subordinate Debt for Stressed MSMEs' on 13 May, 2020, under the Aatma Nirbhar Bharat Package.

Accordingly, a scheme viz. 'Credit Guarantee Scheme for Subordinate Debt' was approved by the Government on 1 June, 2020 and the scheme was launched on 24 June, 2020 to provide credit facility through lending institutions to the promoters of stressed MSMEs viz. SMA-2 and NPA accounts who are eligible for restructuring as per RBI guidelines on the books of the Lending institutions.

Initially the scheme was upto 31.03.2021. In order to keep the avenues of assistance to stressed MSME Units open, the Government had earlier extended this scheme upto 31.03.2022. Now, on the basis of the requests received from the stakeholders of the scheme, the Government has decided to further extend this scheme till 31.03.2023.
[Press Release, dated March 14, 2022]

COMPANY LAW

Amendments in Companies Act, 2013

Notification no. S.R. 107(E)1 inserted sub-rule 1(B) under rule 12 of the Companies (Accounts) Rules, 2014

states that every company covered under the provisions of sub-section (1) to section 135 (Corporate Social Responsibility) of the Companies Act, 2013 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

For the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

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ACCOUNTS & AUDIT

Audit Trail feature in the accounting software of companies is mandatory with effect from April 1, 2022

In order to mitigate the chances of fraudulent transactions or manipulation in the books of accounts of the company and to bring in more transparency, the Ministry of Corporate Affairs (MCA), by virtue of notification no.G.S.R. 205(E) dated 24th March 2021, requires the companies to comply with using the accounting software which has a feature of recording the 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. However, the applicability of such amendment was later deferred for one year vide notification dated 1st April 2021, G.S.R. 247(E). Hence, the amendment is effective from the financial year commencing on or after 1st April 2022

GOODS AND SERVICE TAX

Revision of Limit of Aggregate Turnover For E-Invoice W.E.F. 01.04.2022

CBIC made E-invoice under GST mandatory for registered persons having aggregate turnover above ₹20 crore in any of the previous years from 2017-18 till 2021-22 with effect from 01st April, 2022. The existing limit of ₹50 crores has been reduced to ₹20 crores vide Notification No. 01/2022 – Central Tax issued on 24th February, 2022.

(Notifications No. 01/02022-Central Tax (Rate) dated 24th February,2022.)

Case Law

I. IN THE HIGH COURT OF BOMBAY

M/s FUTURIST INNOVATION AND ADVERTISING
Vs
UNION OF INDIA AND OTHERS

Facts:

- The Petitioner is a sole proprietary concern engaged in the business of advertising and marketing. On 11 October 2019, the Petitioner was informed by its banker, i.e. M/s Canara Bank, Mumbai-400 004 that the bank account of the Petitioner had been freezed by a letter issued by Assistant Commissioner, Office of the Commissioner, Goods and Services Tax, GST Bhavan, Faridabad, Haryana.
- The GST registration of the Petitioner has been cancelled suo-moto by the GST, Mumbai Commissionerate since 14 December 2020.

Issue:

- Provisional attachment of their Account maintained with the M/s Canara Bank, Mumbai and ordered by way of letter dated 11 October 2019 issued by the Assistant Commissioner (Anti- Evasion), Goods & Service Tax, Faridabad, Haryana –
- Petitioner submits that the said order of provisional attachment expired on 10th October 2020 in view of s.83(2) of the Act and, therefore, cannot be continued beyond the period of one year

Held:

- It is held by the Supreme Court that the power to order a provisional attachment is entrusted to the Commissioner during pendency of the proceedings under any of the specified provisions under Sections 62, 63, 64, 67, 73 or 74 of the CGST Act, 2017
- It is further held that under sub-section (2) of Section 83, a provisional attachment ceases to have effect upon the expiry of the period of one year of the order being passed under sub-section (1) - Bench is of the view that the provisional attachment levied by the Respondents on 11 October 2019 under Section 83(2) of the said Act ceased to have effect on expiry of one year - Writ petition is, therefore, allowed in terms of prayer (i) of the petition: High Court [para 10, 11]

II. IN THE HIGH COURT OF ORISSA AT CUTTACK SREYASRI MOTORS Vs THE CT & GST OFFICER SAMBALPUR-I CIRCLE SAMBALPUR ODISHA AND OTHERS

Facts:

- The returns filed in Form GSTR-3B by the assesse was showing excess credit availed.
- The Deputy commissioner without providing a reasonable opportunity to rectify/revise the return, sent a demand notice.

Issue:

Petitioner assails the demands confirmed by the Deputy Commissioner on the ground that excess input tax credit has been allegedly claimed in the return in Form-GSTR-3B vis a vis Form-GSTR-2A; submits that reasonable opportunity to rectify such error that crept in while feeding onto the computer system during preparation of return, was not given, therefore, the present writ petition.

Held:

The proper forum for the Petitioner would be to approach the Appellate Authority rather than invoke writ jurisdiction under Article 226 of the Constitution before this Court - Accordingly, the Petitioner is permitted to file Appeal under Section 107 of the OGST Act with an application for condonation of delay and if filed within a period of four weeks from today, the question of limitation shall not be pressed by the revenue keeping in view that the Petitioner was prosecuting its case in this Court - Bench is not inclined to interfere with bank attachment orders, however, the same shall be considered by the assessing officer/competent authority on the Petitioner satisfying statutory requirements including pre-deposit for filing of appeal - Petition disposed of: High Court

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