Circulars adverse to The IT Dept. are also binding on officers [Sec 119 of ITA'61 – Sec 239 of ITA'25]

By: Vivek Jalan

FCA, LL.M (Constitutional Law), LL. B, MBA (International Trade), B. Com (H)
Team Tax Connect

A circular can be adverse to the Income Tax Department, but still are binding on the authorities of the IT Department, but cannot be binding on the assessee if they are adverse to the assessee. This is a settled position after the judgement of The Hon'ble the Supreme Court in the case of UCO Bank vs. CIT (1999) 154 CTR (SC) 88. Hence, the authorities cannot select any case for detailed scrutiny against the circulars issued by the Board. The CBDT's Instruction NO. 1935/1996 dated: March 12, 1996, It was decided that the norms of exclusion from sample scrutiny could be extended for the assessment year 1996-97 in the cases where the following criteria are satisfied:-

Those assessees who declared a total income for the assessment year 1995-96 that was more by 30 per cent of the total income returned for the assessment year 1994-95 subject to the conditions that:

(i) the total income for the assessment years 1995-96 and 1996-97 exceed the basic exemption limit.

(ii) the total income for the assessment year 1995-96 does not exceed Rs. 5 lakhs; and

(iii) taxes for the assessment year 1996-97 are fully paid before the return is filed for that year.

If, however, the case falls under the compulsory scrutiny basket, the above norms of exclusion from scrutiny would not apply.

If the above requirements were fulfilled by the assesse, the case could not be taken up for sample scrutiny even incase the other balance sheet items were of high financial value and where the revenue would have doubts.

If these criteria were fulfilled, then even if genuineness of Share application money, loans and advances taken or made, etc are prevalent, the case cannot be taken up for sample scrutiny as was held in the case of COMMISSIONER OF INCOME TAX, ROHTAK Vs M/s CRYSTAL PHOSPHATES LTD. [2023-VIL-50-P&H-DT].

The CBDT, could issue such orders, instructions and directions to other IT authorities as it may deem fit for the proper administration of the Act and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. The power is given to the Board for the purpose of proper and efficient management of the work of assessment. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities.

To the same effect is the judgment passed by the Calcutta High Court in Amal Kumar Ghosh vs. Assistant Commissioner of Income Tax & others, (2014) 105 DTR 351 (Cal), wherein it has been held that during the financial year 2004-05, the selection of case for scrutiny had to be completed within 3 months of the date of filing of return. In that case, return was filed on 29.10.2004 and selection of case for scrutiny was done on 06.07.2005 i.e. the beyond the period of three months. It was held that instructions of CBDT were violated, as the circulars were binding upon the department. The Department was bound by that standard and could not act with discrimination. Finally, the appeal was allowed.

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

1st Floor, AJ House, Marol Maroshi Rd, Gamdevi, Marol, Andheri East, Mumbai, Maharashtra 400059

Contact Person: Prashant Kumar Jha
Email: prashant.jha@taxconnect.co.in

BENGALURU

Go Spaze, B Narayana Pura, Pura, Mahadevapura, Outer Ring Road, Near HDFC Bank, Karnataka -560016

Contact Person: Tarun Singh Bhadouria
Email: tarun.bhadouria@taxconnect.co.in

DELHI

D-32, Second Floor, Main Vikas Marg, Laxmi Nagar, Delhi – 110092

Contact Person: Poonam Khemka
Email: Poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata – 700001

Contact Person: Sandeep Mandal
Email: Sandeep.mandal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh
Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai

Contact Person: Rohit Sharma
Email: rohit.sharma@taxconnect.co.in

Disclaimer:

This publication is for private circulation only. Views expressed herein are of the Tax Connect team and are based on the information, explanation, and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared based on published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.