Direct Tax Vista

Your weekly Direct Tax recap

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1. Principle of Mutuality not to apply on income from deposits/ non-members, of clubs – No rethink on settled position

After the judgement in the case of Ahmedabad Urban Development Authority, many experts were of the opinion that NGOs/ Trusts could take the shelter under 'principle of mutuality' for the non-member part of the income. However, this short but interesting question of law was answered by The Hon'ble Apex Court in the case of SECUNDRABAD CLUB ETC Vs C.I.T.-V ETC [2023-VIL-22-SC-DT]. The interest on deposit of surplus funds by the appellant Clubs by way of bank deposits in various banks is liable to be taxed in the hands of the Clubs; the principle of mutuality would not apply and the interest earned from the deposits would be subject to tax under the provisions of the Income Tax Act, 1961.

The High Courts have uniformly held that the interest earned on the bank deposits made by the clubs is liable to be taxed in the hands of the clubs and that the principle of mutuality would not apply. Also the judgment of the Apex Court in the case of Bangalore Club vs. Commissioner of Income Tax, (2013) 5 SCC 509 ("Bangalore Club") was in favor of the revenue. However, the question was whether it calls for reconsideration in view of the earlier order of The Apex Court in Commissioner of Income Tax vs. M/s Cawnpore Club Ltd., Kanpur ("Cawnpore Club") disposed off on 05.02.1998 reported in (2004) 140 Taxman 378 (SC). While considering the above controversy, The Apex Court disposed of the matter by holding that the judgment in Bangalore Club does not call for reconsideration and disposed off the appeals in terms of the said judgment. Further, if any income is earned by the Clubs through its assets and resources, from persons who are not members of the Clubs, such income would also not be covered under the principle of mutuality and would be liable to be taxed under the provisions of the Income Tax Act.

2. Instruction regarding implementation of the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central-3) v/s Abhisar Buildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)

Hon'ble Supreme Court in the case of *PCIT vs Abhisar Buildwell P. Ltd. [Civil Appeal No. 6580 of 2021]* dated 24.04.2023 upheld the ratio of Hon'ble Delhi High Court's ruling in *Kabul Chawla [(2016) 380 ITR 573]* and Hon'ble Gujarat High Court's ruling in *Saumya Construction [(2016) 387 ITR 529]* that for completed or unabated assessments, the Revenue has no jurisdiction under Section 153A/153C in the absence of any 'incriminating material' found during a search under Section 132 or requisition under Section 132A. However, the Hon'ble Supreme Court holds that the Revenue cannot be left without a remedy in such cases, therefore, the Revenue can initiate the reassessment proceedings under Sections 147/148 subject to fulfilment of the conditions contained therein. Accordingly, exercising powers under section 119, the CBDT issued the instruction 1 of 2023 dated 23rd Aug 2023 for AOs for implementing the above judgment while framing assessments. The AOs are directed to divide the cases impacted by the judgment into two broad categories – Pending/abated and completed/unabated assessments. In this regard, it may be stated that on the date of search, the assessment is required to be framed U/s 153A of the preceding six years of search. In the cases where the time limit for issuance of notice under section 143(2) of the Act stood expired at the time of search or when the earlier assessment order included in such block has already been framed, such assessment years are referred as "completed/unabated". Diagonally, in the cases where the time limit for issuance of notice under section 143(2) of the Act is not expired at the time of search in such cases the earlier assessment could not have been framed, such assessment years are referred as "pending/abated". The procedure in both the cases would be as follows -

A. **Pending/abated assessments**: In such cases, if any proceedings initiated or any order of assessment or reassessment has been annulled in appeal or in any other legal proceedings, the same shall stand revived from the date of receipt of the order of annulment as per the provisions of section 153A(2). The AO would need to take necessary action as per the provisions of section 153A(2) read with section 153(8), in respect of such pending/abated assessments.

Section 153A(2) specifies that *If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the 6[Principal Commissioner or] Commissioner:*
Provided *that such revival shall cease to have effect, if such order of annulment is set aside.*

Section 153(8) specifies that notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.

II. **Completed/unabated assessments** : In respect of assessments that were unabated/completed at the time of issue of notices under section 153A/153C, the following scenarios will emerge:

a) Lead and all the tagged cases: AO will be required to reopen the cases following the procedure prescribed under section 148A in accordance with the law laid down by the Hon'ble Supreme Court. In view of the specific provisions of section 153(6), all the cases reopened under section 147/148 will be required to be completed by 30th April 2024.

b) Cases where an appeal is pending (filed either by the Department or the assessee or both) before:

CIT(A): The said judgment is required to be brought to the notice of CIT(A).

ITAT: The departmental representative should bring the said judgment to the notice of the ITAT in the cases covered by the judgment.
High Court: The Standing Counsel should bring the said judgment to the notice of the High Court in the cases covered by the judgment.

c) Cases where the decisions of appellate authorities rendered after the Supreme Court judgment are inconsistent with the same: Necessary action may be taken to file Miscellaneous Application (MA) and Notice of Motion (NoM) to the ITAT and High Court, respectively, requesting the review of the decision in line with the Abhisar judgment, with a prayer for condonation of delay, wherever necessary.

The time limit for filing a Miscellaneous Application before the ITAT is 6 months from the end of the month in which the order is passed by the ITAT, as per section 254. On receipt of the decision of the Hon'ble ITAT/High Court, as the case may be, necessary action as per law and extant instructions should be taken. The literal interpretation of the same is that where the Appellate Authority prescribed under the Income Tax Act, 1961 i.e., CIT(A) and ITAT has given any decision which is not in consonance of the ratio of Abhisar Buidwell, corrective actions is required to be taken in such cases. This means that the said decisions should specifically include that in case of completed/ unabated assessment, if "other materials" are available then the reassessment provisions under section 147/ 148 shall stand to be taken.

It is thus clear that CBDT is of the view that the corrective action is to be taken only in the matters which are pending before Appellate Authorities or are tagged with the lead matter or in which the orders have been passed in contravention to the ratio of Abhisar Buildwell Pvt. Ltd. By giving the present instruction, the CBDT has given a respite in a number of cases which stands settled and are not pending. However, the cases which are pending at various appellate forums shall feel the heat of the said judgment in view of the specific directions of the CBDT given under the instruction.

3. 139(9) Order appealable only incase taxpayer denies his liability to be assessed under The Income Tax Act

A piece of legislation ultimately aims at the wellbeing of the society at large. No technicality can be allowed to operate as a speed breaker in the course of dispensation of justice. In the context of taxes, if a particular relief is legitimately due to an assessee, the authorities cannot circumscribe it by creating such circumstances leading to its denial. A look at different clauses of section 246A(1) transpires that an order u/s 139(9) is ex facie not covered therein. However, clause (a) of section 246A(1) can provide succor to the assessee. Thus any order passed under the Act against the assessee, impliedly including an order u/s 139(9), having the effect of creating liability under the Act which he denies, gets covered within the ambit of clause (a) of section 246A(1).

However, as held in the case of AMRUT RAJENDRAKUMAR BORA Vs THE DCIT PUNE MAHARASHTRA [2023-VIL-1106-ITAT-PNE], Sec.246(1)(a) comes into play only when the concerned taxpayer “denies his liability to be assessed under this Act” and not when the dealing is only with an issue of validity of a return. In such a case, only stricter interpretation has to be adopted in light of hon’ble Apex Court’s landmark decision in Commissioner of Customs (Imports), Mumbai vs. M/s. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB).

4. Mere non-filing of Form 10B cannot lead to denial of exemption

The CPC is not correct in denying exemption u/s 11/12A merely due to the non-filing of the audit report in Form 10B. The recent judgement of The Gujarat HC in the case of Social Security Scheme of GICEA Vs. CIT (Exemptions), re-emphasises the settled issue that the benefit of exemption under section 11 and 12 should not be denied merely on account of delay in furnishing the audit report, and it would be sufficient compliance, if the audit report is furnished at a later stage either before the AO during the assessment proceedings or before the ld.CIT(A) in the appellate proceedings. In the case of JCIT(OSD)(E), CIR.1 AHMEDABAD Vs GUJARAT ENERGY DEVELOPMENT AGENCY [2023-VIL-1116-ITAT-AHM], it was held that the provisions regarding furnishing of audit report with the return have to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. It is permissible for the assessee to produce the audit report at a later stage, either before the AO or the appellate authority.

5. TDS on year-end provision is a debatable Issue: Can't be rectified u/s 154 of the IT Act

Section 154 of the Act provides to rectify only those mistakes which are apparent from the record and not on debatable issues. TDS on year-end provisions is one such debatable issue. Many a times, expenses are identifiable and hence provision is made to comply with the accounting standard and fair presentation of financial statements as per regular accounting practice. On calculation of tax computation, relevant expenditure is disallowed u/s 40(a) (ia)/40(a)(i) of the IT Act and added back and the actual amount which has been crystallized during the relevant year is reduced. In the subsequent year, as and when the amount of expense is paid or credited to the relevant party then tax on the same is deducted. Since there is no amount credited or paid to any identifiable person, therefore, liability of TDS does not arise. As and when the amount is credited or paid, TDS is deducted.

A contrary view on this issue has also been taken in some cases. Whatever be the view on merits of the case, yet it is clear that the issue of year-end provisions is debatable and since it is so, it cannot be a matter of rectification u/s 154 as was held in the case of JCIT(OSD), CIRCLE-77(1) NEW DELHI Vs SISTEMA SHYAM TELESERVICES LTD. [2023-VIL-1102-ITAT-DEL]

6. Self-disclosure of additional income Vs Evidenced undisclosed income, unearthed during search and seizure operations under Income Tax

The CBDT issued a circular F.No.286/2/2003-IT(Inv.) dated 10-03- 2003 and has expressed -

"Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of

income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely. Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

In cases where department carries out the search and seizure operation on the assessee and does not find any evidence which could show that the assessee was having undisclosed income, self-disclosure of additional income by the assessee cannot be considered as undisclosed Income as was held in the case of SHRI PARAS MAL JAIN Vs THE DCIT CENTRAL CIRCLE-1 JAIPUR [2023-VIL-1104-ITAT-JAI].

7. Relief to employees from 1st Sep 2023 in valuation of Rent Free Accommodation

The Finance Act of 2023 incorporated amendments for the calculation of perquisites concerning the value of rent-free or concessional accommodation provided by employers to employees. The CBDT has now modified Rule 3 of the Income Tax Rules, 1962, to accommodate these changes. The amended rule provides detailed guidelines for determining the value of residential accommodation perquisites based on various scenarios and parameters.

The significant changes introduced by the amendment include a shift in categorization and limits of cities and populations based on the 2011 census. The earlier perquisite rates of 15%, 10%, and 7.5% have been revised to 10%, 7.5%, and 5% of the salary, respectively. The revised rates are applicable according to the population criteria, categorizing cities as per the census data.

Previous Categorisation and Rates		New Categorisation and Rates	
Population	Perquisite Rate	Population	Perquisite Rate

More than 25 lakh	15%	More than 40 lakh	10%
Between 10 lakh and 25 lakh	10%	Between 15 lakh and 40 lakh	7.5%
Less than 10 lakh	7.5%	Less than 15 lakh	5%

Furthermore, the amendment ensures that the valuation of perquisites considers situations where an employee occupies the same accommodation for more than one previous year, aiming for a fair tax implication. Hence, where the accommodation is owned by the employer and the same accommodation is continued to be provided to the same employee for more than one previous year, the amount calculated shall not exceed the amount so calculated for the first previous year, as multiplied by the amount which is a ratio of the Cost Inflation Index for the previous year for which the amount is calculated and the Cost Inflation Index for the previous year in which the accommodation was initially provided to the employee.

8. New Guidelines for Tax Exemptions Under Section 10(10D) For High Premium Life Insurance Policy

The CBDT has notified the Income Tax Amendment (Sixteenth Amendment), Rules, 2023, prescribing rule 11UACA for calculating income with respect to sum received upon maturity of life insurance policies wherein the amount of premiums exceed Rs 5 lakh and such policy/policies are issued on or after April 1, 2023. Accordingly, for policies issued on or after April 1, 2023, the tax exemption on maturity benefits under Section 10(10D) will only be applicable if the aggregate premium paid by an individual is up to Rs 5 lakh a year. Any surplus amount received on maturity would be subject to tax under the head 'income from other sources'. The taxation provision for the amount received on the death of an insured has not been changed and that continues to remain exempt from income tax.

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