VILGST

Direct Tax Vista

Your weekly Direct Tax recap

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1. AO cannot revisit the assessment where there was no failure on the part of assessee to disclose all material facts necessary for the purpose of assessment

Assessment orders are not a scrap of paper which can be overturned by reopening the assessment in casual manner. Finality to assessment must be recognized as matter of principle and reopening should be an exception. Reassessment is one of the distinguishing weapons in the armoury of the Department, empowers the Assessing Officer to assess, reassess or recompute income, turnover etc, which has escaped assessment. However, it seems department claims as a matter of right to reopen the assessments without appreciating the real intend or purpose behind enacting such provision. The courts thus keep turning down such re-opening of assessments again and again as also done in the case of THE UNITED THEOLOGICAL COLLEGE Vs ITO (EXEMPTIONS) WARD-2 BANGALORE [2024-VIL-97-ITAT-BLR].

If there is a failure on the part of AO to consider the various documents filed by the assessee at the time of original assessment u/s 143(3) of the Act, he cannot revisit these documents after the expiry of 4 years from the end of relevant assessment years incase there was no failure on the part of assessee to disclose all material facts necessary for the purpose of assessment. Incase there was no allegation by the AO while recording the reasons for reopening of assessment to the effect that the assessee has failed to disclose fully and truly all material facts necessary for its assessment for the assessment year.

2. Issuance of notice u/s 143(2) is mandatory and non-compliance of the same will result in nullifying the assessment orders

Hon'ble SC In the case of GKN Driveshafts (India) Limited v. ITO (2003) 259 ITR19(sc), The Hon'ble Supreme Court has laid down an elaborate procedure as to the manner of dealing with objections raised against a notice under The Income Tax Act. An Assessee may raise objection on the reasons formed by the Assessing Officer. The Assessing Office is to take note of these objections and has to dispose of the same before commencing reassessment by passing a "speaking order". Where the Assessing Officer passed an order of reassessment without hearing objections of Assessee, it was held that the Assessing Officer had acted arbitrarily and in a manner clearly contrary to law in passing an order without disposing of the objections of the Assessee and such order was liable to be set aside. Hence, non-issuance of notice under section 143(2) of the Act is not a curable defect. The failure of AO in reassessment proceedings to issue a notice under section 143(2) prior to finalizing the reassessment order cannot be condoned.

Further, the interplay of Sections 143 (2) and 148 of the Act formed the subject matter of at least two decisions of the Allahabad High Court. In CIT v. Rajeev Sharma (2011) 336 ITR 678 (All.) it was held that a plain reading of Section 148 of the Act reveals that within the statutory period specified therein, it shall be incumbent to send a notice under Section 143(2) of the Act.

However, the legislature, vide Finance Act, 2008 introduced Sec. 292BB which gave immunity to the Department by applying Principle of Estoppel in cases where an assessee has appeared or co-operated in any proceeding relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served in time and such assessee shall be precluded from taking any objection against the same, except before 'completion of assessment'. It was observed by P&H High Court in Rajbir Singh, Karta of Ch. Kesho Dass (HUF), that purely technical objections carrying no substance that came in the way of assessment proceedings were taken care by introduction of this section. In today's insight, we have made an attempt to compile rulings on the aforesaid aspects and more.

In this backdrop, The Hon'ble ITAT in the case of JABALPUR DEVELOPMENT AUTHORITY Vs A.C.I.T., CIRCLE-2(1), JABALPUR [2024-VIL-89-ITAT-JBL] held that the issuance of notice u/s 143(2) is mandatory and non-compliance of the same will result in nullifying the assessment orders. As regards the provision of section 292BB of the Act it was held that in the present case the issue was regarding non-issuance of notice itself and there was nothing on record to prove that the notice u/s 143(2) of the Act was issued by the AO. Therefore, the protection under section 292BB of the Act was not available to the Department.

This case could thus be used as a precedent in similar cases.

3. Only short deduction of TDS does not make the entire amount of expense liable for disallowance

Only short deduction of TDS does not make the entire amount of expense liable for disallowance by invoking the provisions of section 40(a)(ia) of the Act. The judgement of Delhi High Court in the case of PCIT Vs. Future First Info Services Pvt. Ltd. (447 ITR 299) (Delhi) can be relied upon. With regard to short fall, it cannot be assumed that there is a default as the deduction is not as required by or under the Act.

Section 40(a)(ia) of the Act refers to only deduction of TDS and pay to the Government. If there is any short fall due to any difference of opinion as to the liability of any item or nature of payments falling under various TDS provisions, the tax payer cannot be declared to be an "assessee in default" u/s 201 of the Act. Further incase the recipient of the payments files the return of income by taking into account the said impugned amount while computing the income of that assessee and pays tax due on the income declared by that assessee in its return of income as provided in first proviso to sub-section (1) of section 201 of the Act. Being so, as per second proviso to section 40(a)(ia) of the Act, the said impugned amount cannot be disallowed in the hands of the present assessee also. The decision of DCIT Vs. M/s. Shiv Build India, Bhavnagar in ITA No.73/Ahd/2018 dated 16.6.2023 can be relied upon. The same was also upheld in the case of HUBLI ELECTRICITY SUPPLY Vs DCIT CIRCLE-1(1) HUBLI [2024-VIL-88-ITAT-BLR].

4. Even when the assessee has not claimed an expenditure in the P&L account, it be disallowed u/s 43B of the Act

The question is that when the assessee has not claimed it as an expenditure in the P&L account, could it be disallowed u/s 43B of the Act?

The Hon'ble Supreme Court in the case of Chowringhee Sales Bureau Pvt. Ltd. 1973) 87 ITR 542 (SC) held that sales tax collected by assessee is revenue receipt even if it is shown by the assessee not non-revenue head and such treatment by the assessee is not decisive. As per the provisions of section 43B of the Act, any sum payable by assessee by way of tax, duty, cess or fee by whatever name called, or any law for the time being in force not paid within due date of filing return of income to be disallowed computing the income of the assessee.

Even though the assessee does not claim the amount of taxes in its P & L account as an expenditure and, therefore, section 43B has no application; yet the fact remains that service tax/GST/Sales Tax/etc collected by the assessee but not paid to the Government account up-to the end of the financial year or even up-to the date of filing of the return of income, by not including the amount in income and expense, assessee makes a claim indirectly.

Hence it was held in the case of HUBLI ELECTRICITY SUPPLY Vs DCIT CIRCLE-1(1) HUBLI [2024-VIL-88-ITAT-BLR] that as per provisions of Section 43B of the Act, any sum payable by assessee by way of tax, duty, cess or fee has not been paid within due date of filing return of income should be disallowed while computing income of assessee. Non-payment of amount to government account before due date of filing return should be disallowed, though it was not charged to P&L account and it attracted provisions of Section 43B of the Act.

5. De-commissioning cost for dismantling of old/faulty asset is revenue in nature

De-commissioned cost incurred towards the labour charges for dismantling of old/faulty asset is purely revenue in nature as it cannot add in value or life to the fixed assets. Therefore, as per the accounting norms, this cost is treated as revenue expenditure, which is incurred in the relevant year and same has to be the treatment in Income Tax. It cannot be treated as an expenditure like installation of asset and cannot be capitalized and not considered as bringing enduring benefit to the assessee as held in the case of HUBLI ELECTRICITY SUPPLY Vs DCIT CIRCLE-1(1) HUBLI [2024-VIL-88-ITAT-BLR]

6. RBI eases credit concentration norms for Middle Layer NBFCs

The Reserve Bank of India has permitted middle layer non-bank financial companies to use credit risk transfer instruments. NBFC-ML will now be able to use these instruments to compute exposure. The Large Exposures Framework was earlier only applicable on upper layer NBFCs. But with this extension, credit risk transfer instruments like cash margin/caution money/security deposit, central government and state government guaranteed claims will be allowed to NBFC-ML too. In order to be eligible as a credit risk transfer instrument, guarantees shall be direct, explicit, irrevocable and unconditional. Apart from the existing exemptions, Exposure to the government of India and state governments, which are eligible for 0% risk weight under capital regulations applicable to NBFCs and Exposure where the principal and interest are fully guaranteed by the Government of India, would also be exempted from credit concentration norms.

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