Direct Tax Vista

Your weekly Direct Tax recap

Edn. 99 – 20th March 2024

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1. Appeal against intimation u/s 143(1) or rectification u/s 154 or both?

Under the scheme of the Income tax Act, the assessee has two remedies against the Intimation u/s 143(1), viz.-

(i) file rectification-application u/s 154, or
(ii) file appeal u/s 246A.

A rectification-application u/s 154 is not only one of the available remedy but also a simpler remedy and practically resorted to by many of the assessees, The question however is whether the assessee can avail both the options simultaneously. The Hon'ble ITAT Kolkata in the case of AVISHI PROJECTS LLP Vs ADIT, CPC, BANGALORE [2024-VIL-378-ITAT-KOL], held in the affirmative.

The case was where the credit of TDS and TCS, was not allowed in the return processed u/s 143(1)(a) of the Act against which the assessee has filed an appeal. The assessee had also filed application u/s 154 of the Act which was also disposed against the assessee. However, the appeal against the order u/s 143(1)(a) of the Act was still alive. The CIT(A) without adjudicating the issues on merits merely dismissed the appeal observing that since the rectification order u/s 154 of the Act has been passed, the intimation u/s 143(1)(a) of the Act, has got subsumed and merged and the appeal of the assessee has become infructuous.

However, The ITAT did not find any merit in decision of the CIT(A) since the proceedings carried out in the form of filing of appeal against order u/s 143(1)(a) are separate to that of the proceedings carried out u/s 154 of the Act and even if

the application u/s 154 of the Act was disposed off but still the appeal against the 143(1)(a) of the Act was alive.

It held that The ld. CIT(A) ought to have dealt with the issue on merits. Hence, the matter was remanded to the ld. CIT(A).

2. Modified ITR for Business Reorganization from June 2016 to March 2022 possible until June 30, 2024... taxpayer to communicate to JAO by 30th April 2024

Section 170A was inserted vide the Finance Act, 2022 with effect from April 1, 2022, to make provisions for giving effect to the order of business reorganization issued by a tribunal, court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. Section 170A(1) of the Income-tax Act, 1961 provides as follows –

> ***Effect of order of tribunal or court in respect of business reorganisation.***
>
> *170A. (1) Notwithstanding anything to the contrary contained in section 139, in a case of business reorganisation, where prior to the date of order of a High Court or tribunal or an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as order in respect of business reorganisation), as the case may be, any return of income has been furnished by an entity to which such order applies under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, the successor shall furnish, within a period of six months from the end of the month in which the order was issued, a modified return in such form and manner, as may be prescribed, in accordance with and limited to the said order.*

The Board, through its order u/s 119 dated 26.09.2022, permitted successor companies, if the business reorganization order was issued between 01.04.2022 to 30.09.2022, to submit modified returns under section 170A of the Act by March 31 2023.

However, the permission was pending for entities to submit income returns following business reorganization through amalgamation, merger, or demerger, sanctioned by a competent authority under the Insolvency and Bankruptcy Code, 2016, before 01.04.2022. In respect of such entities, the Apex Court, in the case of Dalmia Power Ltd. v. ACIT, held that the Department was to consider revised returns filed beyond the prescribed timeline after taking into account the scheme of amalgamation as sanctioned by NCLT.

Therefore, the entities whose scheme of business reorganization was sanctioned by the competent authority vide orders dated prior to 01.04.2022 were outside the purview of section 170A. Consequently, these entities could not file modified returns of income under section 170A of the Act. To address the challenges faced by these entities and ease their genuine difficulties, the CBDT has now issued an order allowing successor companies to submit modified returns for the relevant assessment year. This can be done through the e-filing portal functionality. The order outlines a three-step process for entities to follow, including communication with the Jurisdictional Assessing Officer (JAO), verification of the return's compliance with the reorganization order, and electronic filing within specified timelines as follows –

Step	Action	Time-Line
First	Communication by the taxpayer to the Jurisdictional Assessing Officer (JAO) as per the proforma, for enablement of electronic filing of the return. (A)	Up to 30.04.2024.
Second	Completion of verification by the JAO as to whether the return is resulting from and limited to the order of the competent authority & enablement through ITBA, information about which will be received by taxpayer on its e-filing portal.	Preferably, within 30 days of the receipt of (A).
Third	Electronic filing of the return for relevant assessment year(s) on the e-filing portal by the taxpayer.	Up to 30.06.2024.

3. Reporting of numbers within strict timelines: RBI denies extension of cut-off time to agency banks for uploading GST, ICEGATE and TIN 2.0 files

The Government wishes to be spot on in the release of the numbers. We are witnessing the same as GST / Income Tax Collection figures are released almost on a real time basis. This is possible only if the banks report their figures within strict timelines. The RBI issued a circular on reporting of transactions by agency banks to RBI. As per the circular, the agency banks must ensure that luggage files are uploaded in RBI's QPX/e-Kuber on or before 1800 hours prescribed by CBDT/CBIC. Several agency banks requested an extension of time for uploading luggage files.

RBI has made it clear that no extensions will be entertained for extension beyond the designated cutoff time of 1800 hours for the submission of luggage files pertaining to GST, ICEGATE and TIN 2.0 receipts, in accordance with the existing guidelines on this matter. The directive stems from para 10 of the 'Master Circular on Conduct of Government Business by Agency Banks – Payment of Agency Commission' dated April 1, 2023.

4. Income from sale of scrap, Freight recoveries, Insurance recovery, Rent of ATM installed in factory, Exchange fluctuation gain for payment to creditors are all income from industrial undertaking

Section 80-IB of the Income Tax Act provides for deduction in respect of profits and gains from certain industrial undertakings other than the infrastructure development undertakings. Thus, the question often comes up as to whether certain incomes can be said to be derived from the business of industrial undertaking and thus eligible for the benefits of Section 80-IB of Income-tax Act, 1961.

In the case of Saraf Exports Vs CIT (Supreme Court of India), The Apex Court held that on the profit earned from DEPB / Duty Drawback Schemes, the assessee is not entitled to deduction under Section 80-IB of the Act, 1961.

In the case of UFLEX LTD Vs ACIT, CENTRAL CIRCLE-27, NEW DELHI [2024-VIL-362-ITAT-DEL] certain incomes like Income from sale of scrap, Freight recoveries, Insurance recovery, Rent of ATM installed in factory, Exchange fluctuation gain for payment to creditors, came up for contention. It was decided that for the purpose of Section 80IB of Income Tax Act, if one has Income from sale of scrap, the same is to be treated as derived from the business of the industrial undertaking of the assessee was the decision of Hon'ble Delhi High Court in CIT vs. Sadhu Forging Ltd. (2011) 336 ITR 444 (Delhi). The same was also held by the ITAT Delhi in the case of ACIT vs. Ultimate Flexipack Ltd. (ITA No. 1418/Del/2018) dated 06.09.2021. Similarly, Freight recoveries are the part of the sales proceeds of the undertakings; Insurance recovery received on damaged goods are also the part and parcel of the profit of the undertaking; Rent of ATM installed in factory are also derived as a result of working of the undertaking; Exchange fluctuation gain for payment to creditors is nothing but the reduction in the purchase cost. The Hon'ble Supreme Court in CIT vs. Meghalaya Steels Ltd. (2016) 383 ITR 217(SC), also held accordingly.

5. Reimbursement/income from employees is a business income

Employees are often provided various benefits/advantages and these benefits/advantages along with the Cash Component is called "Cost To Company" i.e. CTC. During the course of employment, the employer also receives certain part paybacks from employees for the benefits/advantages provided to them. For example, interest on advances given to its employees as well as collection for provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, staff quarter charges, guest house charges, water charges from employees, etc. The facilities are given to its employees for better conditions of employment. It improves the overall efficiency of the undertaking which is devoted for furtherance of business of the employer. There are other incomes also like sale of Tender forms, supervision charges received, forfeiture of earnest money/security deposit, unclaimed deposits of customers, etc. The question is whether these incomes are 'Income from PGBP' or 'Income from other sources'.

The Hon'ble Odisha High Court in the case of Odisha Power Generation Corporation Ltd. vs. ACIT, Circle-2(2) in ITA No. 1 of 2015 and Ors., has held that such income will be considered as 'Income from PGBP'. On the same ground "loss on account of non-recovery of loan given to employees should also be treated as loss incidental to business activity as the interest is treated as Business Income.

Another similar issue is where company had given the houses owned by it, to its Directors for their residences, whether such income is 'Income from PGBP'. Here also the principle is that if the owner of a property carries on business with a property owned by him, the income from that property must be assessed as only "income from business", as it is doing so only in the course of his business.

The Hon'ble ITAT Ahmedabad in the case of DAKSHIN GUJARAT VIJ CO. LTD Vs THE DCIT, CIRCLE-1(1)(1), VADODARA [2024-VIL-365-ITAT-AHM], accordingly held that interest on advances given to its employees as well as other receipts from employees should thus be treated as income from PGBP.

6. Can valuation of shares be rejected, if done as per DCF method prescribed u/s 56(2)(viib)... and recalculated by AO

Any businessman or entrepreneur, visualises the business based on certain future projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon'ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66 (SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Similarly the Income Tax Department cannot allege malfeasance where the projected revenues could not be achieved.

When it comes to valuation of shares, many questions are raised in many cases of Section 56(2)(viib) of The Income Tax Act read with Rule 11UA(2)(b) of Income Tax Rules. In the DCF Method of valuation, the data is furnished by the management of the company itself. It is based on the future projections and maybe highly deviated from the present picture of the financials of the company. There may be a difference between the values adopted and the actual values reached at by the company. Does this make the valuation exercise irrational and without any basis? The allegation of the AOs in the case of ITO WARD-3(1)(3) BANGALORE Vs IRUNWAY INDIA PVT LTD [2024-VIL-367-ITAT-BLR] was that the valuation exercise is conducted with ulterior motive to justify the share premium received by hiking the fair market value by DCF method. Plethora of cases are available in this regard and the grounds of defence can be as follows –

a. The provision cannot be invoked on a normal business transaction of issuance of shares unless it" has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money

b. Being a deeming fiction, the section and rule has to be strictly interpreted

c. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar and Sons that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted

d. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not we find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling

provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U.

e. The Rules provide for various valuation methodologies. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Taking into consideration the suggestions received in this regard and detailed interactions held with stakeholders, Rule 11UA for valuation of shares for the purposes of section 56(2)(viib) of the Act has been modified vide notification no. 81/2023 dated 25th September, 2023. Now, more methods of valuation have been notified.

7. The levy of penalty under section 271AAB is not mandatory... However where the conditions as per 271AAB(1) are met, there is no bar too

The levy of penalty under section 271AAB of The Income Tax Act is not mandatory or automatic, same needs to be examined, whether there is any basis for levy of penalty or non-levy thereof and the same will depend upon the facts and circumstances of the case.

However where the conditions as per Section 271AAB(1) are met i.e. in a case where search has been initiated under section 132 on or after the time mentioned therein and the clause under which the penalty is applied is spelt out then there is no bar on invoking Section 271AAB. A reasonable opportunity of being heard as prescribed

u/s 274 should be provided. Adequate opportunity of hearing should be given to the assessee to assail the penalty. Whether the same was through statutory notice or a non-statutory notice would be immaterial. The only requirement is that opportunity of hearing should be given specifically mentioning the ground which the assessee has to meet as was held in the case of M/s SUMMIT ONLINE TRADE SOLUTIONS PVT LTD Vs DCIT CENTRAL CIRCLE-1(3) CHENNAI [2024-VIL-387-ITAT-CHE]

8. The character of subsidy in hands of recipient (either revenue or capital) will have to be determined by having regard to purpose for which the subsidy is given

A common question is whether subsidy received in form of sales tax incentive Scheme is a capital receipt or a revenue receipt. The short answer to the question can be had In the case of COMMISSIONER OF INCOME TAX-IV Vs INDO RAMA TEXTILES LTD [2024-VIL-48-DEL-DT] where it was held that the character of subsidy in hands of recipient (either revenue or capital) will have to be determined by having regard to purpose for which the subsidy is given. If purpose of scheme was that assessee will be given refund of sales tax on purchase of machinery as well as on raw materials to enable assessee to acquire new plants and machinery for further expansion of its manufacturing capacity in a backward area, entire subsidy must be held to be a capital receipt in hands of assessee.

9. Income Tax Dept to work on holidays as YoY Collections increase by around 20%

Gross Direct Tax collections for the FY 2023-24 registered a growth of 18.74%; Net Direct Tax collections for the FY 2023-24 have grown at over 19.88%; Advance Tax collections for the FY 2023-24 stand at Rs. 9,11,534 crore which shows a growth of 22.31%. To facilitate completion of pending departmental work, all the Income Tax Offices throughout India shall remain open on 29th, 30th and 31st March, 2024.

The said news is for information of taxpayers.

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