TAX NEWS

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International Tax & Transfer Pricing

Constitution of DRP with Jurisdictional Commissioner as one of the members, is in violation of principles of natural justice

Lion bridge Technologies (P.) Limited Vs. DCIT (ITAT-Mumbai)

The Hon'ble Mumbai Tribunal, following the Uttarakhand High Courts judgment in the case of Hyundai Heavy Industries [341 ITR 203] held that, where a member of the Dispute Resolution Panel (DRP) is jurisdictional Commissioner of the assessee, constitution of DRP is contrary to the principle of natural justice and such order deserves to be set aside.

Liaison Office, in conformity with RBI regulations, is not a PE of foreign company.

Metal One Corporation Vs. Dy. DIT, International Taxation (ITAT- Delhi)

The assessee, a company resident of Japan, opened a LO in India with the prior approval of the RBI in terms of s. 6(6) of the FEMA. The LO was closed down in the year 2008. The assessee was required to pay fringe benefit tax because of which return was filed in which income was shown at nil. The assessee company claimed that its LO was covered by article 5(6)(e) and hence not a PE in India

The Assessing Officer passed a draft order holding that the LO is a PE, carrying on core business activities of price negotiation leading to formation of contract. The DRP upheld the finding of the Assessing Officer and also enhanced the income and the final order was passed accordingly.

On appeal, Tribunal held,

As per FEMA Regulations, 'liaison office' means a place of business to act as a channel of communication between the principal place of business or HO and entity in India but which does not undertake any commercial, trading, industrial activity, directly or indirectly and maintains itself from remittances received from abroad through normal banking channels.

The permitted activities of LO are: (i) representing the parent company/group companies in India, (ii)promoting export/import from/to India, (iii) promoting technical/financial collaborations between parent/group companies and Indian companies, (iv) acting as communication channel between parent and Indian companies. The Revenue's contention that India office was engaged in price negotiation was not correct as quotations were made on the basis of instructions from the Head Office. Also, since the AO had not brought on record any information that the activity was beyond the limit prescribed by the RBI vide the said Regulations, the India office of the assessee could not be said to constitute a PE as no violation was noticed by the RBI.

To "make available" technical knowledge, mere provision of service is not enough; the payer must be enabled to perform the service himself.

CIT Vs. De Beers India Minerals Pvt Ltd (Karnataka - High Court)

The assessee, engaged in prospecting and mining for diamonds entered into an agreement with a Netherlands company for conducting air borne survey and providing high resolution geophysical data. The AO held that the consideration was chargeable to tax as "fees for technical services" under Article 12 of the India-Netherlands DTAA and held the assessee liable u.s 195 & 201 for failure to deduct TDS. This was reversed by the CIT (A) & Tribunal on the ground that though the Dutch company had performed services using technical knowledge and expertise, such technical experience etc had not been "made available" to the assessee.

On appeal by the department to the High Court, HELD dismissing the appeal:

Article 12(5) of the DTAA defines "fees for technical services" to mean payments in consideration for the rendering of any technical or consultancy services "which make available technical knowledge, experience, etc or consist of the development and transfer of a technical plan or technical design. To be said to "make available", the service should be aimed at and result in transmitting technical knowledge etc. so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, to fit into terminology "making available", the technical knowledge, skills" etc must remain with the person receiving the service even after the particular contract comes to an end.

On facts, while the Dutch company performed the surveys using substantial technical skills, it has not made available the technical expertise in respect of such collection or processing of data to the assessees, which the assessee can apply independently and without assistance and undertake such survey independently. Consequently, the consideration is not assessable as "fees for technical services"

A composite contract for installation & commissioning cannot be split so as to exempt the profits from offshore supply of goods

In Re Roxar Maximum Reservoir Performance WLL (AAR)

The Applicant entered into a contract with ONGC for "services for supply, installation and commissioning of 36 manometer gauges". The applicant claimed that the contract, though composite, had to be split into various components in line with Ishikawajima-Harima Heavy Industries 288 ITR 408 (SC), Hyundai Heavy Industries 291 ITR 482 (SC) & Hyosung Corporation 314 ITR 343 (AAR), and that the income attributable to the supply of manometer gauges was not taxable in India because the title to the goods had passed outside India & the payment was received outside India. HELD by the AAR rejecting the plea:

Though in Ishikawajima-Harima, a two judge bench of the Supreme Court had adopted a dissecting approach by dissecting a composite contract into two parts and holding one of the parts not amenable to taxation in India, this cannot be followed in view of the 3 Judge verdict in Vodafone International Holdings vs. UOI 345 ITR 1 (SC) where it was held that a transaction had to be "looked at and not looked through" and seen as a whole and not by adopting a "dissecting approach".

A contract for sale of goods differs from a contract for installation and commissioning of a project. The tests relevant for considering where the title to the equipment, passed would not be relevant while construing the terms of a supply and erection contract. On facts, the contract is for erection and commissioning of 36 manometer gauges and not one for sale of equipment or erection of the equipment. It is a composite & indivisible contract for supply and erection at sites within the territory of India and cannot be split. The income accrued in India and was assessable u.s 44BB of the Act.

Similar decision in Alstom Transport SA Vs. DIT (AAR)

Under Article 7 of the DTAA, foreign PE profits may be taxed in India

Telecommunications Consultants India Ltd Vs. ACIT (ITAT Delhi)

The assessee, an Indian PSU company, earned revenues from foreign projects in Oman etc. The assessee claimed that it had a "permanent establishment" (PE) in those countries and that in accordance with the DTAA, only the source country was entitled to tax the profits and India was not authorized to tax the foreign PE profits.

On appeal the Tribunal relying on the OECD Commentary on the Model Convention held;

While the first part of Article 7 gives exclusive taxation right to the State of residency, the second part gives taxation right to the state of residency as well as to the State where the PE is situated. The phrase "may be taxed" shows that the State of source has the non-exclusive right to tax while the State of residence continues to have the inherent right to tax. Thus, profits earned by foreign PE's can be taxed in India.

Foreign income-tax is deductible u.s 37(1). Bar in s. 40(a)(ii) of the Act does not apply to foreign taxes.

DCIT Vs. Mastek Limited (ITAT- Ahmedabad)

The assessee paid taxes in Belgium as income-tax and claimed that as deduction u.s 37(1) of the Act. The AO rejected the claim by relying on s, 40(a)(ii) of the Act which provides that any sum paid on account of tax levied on profits or gains of business shall not be allowable as a deduction, though the CIT (A) allowed the claim on the ground that the bar in s. 40(a)(ii) of the Act did not apply to foreign taxes.

On Revenues appeal, the Tribunal, upholding the CIT(A) decision held;

The term "tax" is defined in s. 2(43) to mean income-tax chargeable under the provisions of this Act. S. 37(1) allows a deduction of all taxes and rates. Taxes levied in foreign countries whether on profits or gains or otherwise are deductible u.s 37(1) not hit by s. 40(a)(ii) of the Act. It is also not application of income.

TPO has no power to question business purpose of transaction

Ericsson India Pvt. Ltd vs. DCIT (ITAT Delhi)

The assessee made payment of ` 31.34 crores to its associated enterprise for "Second Line Support" services. The TPO & DRP held that the assessee had not benefited from the expenditure and that it was not "necessary to be incurred" and that its ALP was Nil. On appeal by the assessee HELD:

Rule 10B(1)(a) does not authorize disallowance of any expenditure on the ground that it was not necessary or prudent for the assessee to have incurred the same or that in view of the expenditure was unremunerative or that in view of the continued losses suffered by the assessee in his business, he could have fared better had he not incurred such expenditure. The assessee has the right to enter into an arrangement according to which its business interests are protected. It is the prerogative of the assessee to decide the business expediency.

A subsidiary created for Indian business is a PE of the foreign parent.

In Re Aramex International Logistics Pvt Ltd (AAR)

The applicant, a Singapore company, entered into an agreement with an Indian group subsidiary company for the performance of shipment transport services within & outside India. The agreement was on a principal to principal basis. The applicant claimed that as it had no office, equipment, employee or agent in India and did not carry out operations in India, it did not have a PE in India and no part of the receipts from outbound and inbound consignments was taxable in India. HELD by the AAR:

As the subsidiary has a fixed place of business in India and the business of the applicant is carried on through it, the definition in Article 5(1) is satisfied. The subsidiary is also a PE under Article 5(8) because it habitually secures orders in India wholly for the Aramex group and concludes contracts for the group. The exception in Article 5(10) that the fact that a subsidiary carries on business shall not of itself constitute that company a PE of the foreign company does not apply because it is not a case of the subsidiary carrying on "its business" in India but it is a case of the entire group carrying on business in India through the subsidiary. Also, the fact that the agreement refers to the subsidiary as "independent" and "non-exclusive" is not relevant as it is a mere camouflage to screen the fact that the subsidiary is really a PE of the applicant's group in India

Despite Retro Law By Finance Act 2012, "Royalty" Not Taxable as DTAA prevails.

B4U International Holdings Ltd Vs. DCIT (ITAT- Mumbai)

The assessee, a Mauritius company, made payment to Panamsat, USA, for hire of a "transponder satellite". The AO held that the said hire charges constituted "royalty" and that the assessee ought to have deducted TDS u.s 195 of the Act and that as it had not done so, the amount was to be disallowed u.s 40(a)(ia) of the Act. Before the Tribunal, the department argued that though as per Asia Satellite 332 ITR 340 (Del), the hire charges were not assessable as "royalty", this verdict was no longer good law in view of the amendment to s. 9(1)(vi) by the Finance Act 2012 w.r.e.f. 1.4.1976 to provide that such hire charges shall be assessable as "royalty".

HELD by the Tribunal:
In order to constitute "royalty", the payer must have the right to control the equipment. A payment for a standard service would not constitute "royalty" merely because equipment was used to render that service. To "make available" technical knowledge, mere provisions of service was not enough and the payer had to be enabled to perform services himself. The department's argument that the amendments by the Finance Act, 2012 changes the position is not acceptable because there is no change in the DTAA between India and USA and the DTAA prevails where it is favourable to the assessee.***(Reliance placed on Skycell Communications 251 ITR 53 (Mad). In De Beers (Kar) &Guy Carpenter (Del))***.

Even otherwise as the payment is made from one non-resident to another non-resident outside India on the basis of contract executed outside India, s. 195 will not apply. ***(Vodafone International Holdings B.V. 341 ITR 1 (SC)***

Further, as prior to the insertion of s. 40(a)(ia) of the Act in AY 2004-05, payments to a resident did not require TDS, under the non-discrimination clause in the DTAA, the disallowance u.s 40(a)(i) of the Act in the case of non-residents cannot be made. ***(Herbalife International 101 ITD 450 (Del), Central Bank of India & Millennium Infocom Technologies 21 SOT 152 (Del))***

Tax implications of a "Dependent Agent Permanent Establishment" explained

DDIT Vs. B4U International Holdings Ltd (ITAT- Mumbai)

The assessee, a Mauritius company, engaged in telecasting TV channels, had an advertisement collection agent in India who collected revenue from time slots given to Indian advertisers. The assessee claimed that its profits from India were not chargeable under the DTAA because (i) it did not have a PE and (ii) assuming the agent was a PE, the agent had received an arms' length fee from the assessee and further profits could not be attributed. The department relied on DHL Operations B.V. 142 TM 1 (Mum) and claimed that as the assessee was dependent on the Indian agents, the Indian agents constituted a "Dependent Agent PE" and that despite arms' length fee to the agents, profits were attributable to the DAPE. HELD by the Tribunal:

Under Article 5(4) of the DTAA, an "agent" (other than one of independent status) is deemed to be a PE if he "habitually exercises" the authority to conclude contracts. On facts, the agent had no authority to conclude contracts and merely forwarded the advertisement to the assessee. Accordingly, there was neither legal existence of authority, nor evidence to show "habitual exercise" of authority.

Under Article 5(5), an agent is deemed not to be of independent status when his activities are devoted exclusively or almost exclusively to the non-resident enterprises. The wordings refer to the activities of an agent and its devotion to the non-resident and not the other way round. The perspective should be from the angle of the agent and not of the non-resident. As the income from the assessee was only 4.69% of the agent's income, the agent was not a "dependent agent" (Morgan Stanley 272 ITR 416 (AAR) & Rolls Royce (Del) followed);

Even assuming that there was a DAPE, as the agent had been remunerated at arms' length basis, no further profit is attributable to the PE as per Circular No. 742 dated 2.5.1996. (Set Satellite 307 ITR 205 (Bom) & BBC Worldwide 203 TM 554 (Del))

Consultancy fees, if not taxable as "fees for technical services", is not taxable as "other income".

DCIT Vs. Andaman Sea Food Pvt. Ltd (ITAT- Kolkata)

The assessee paid consultancy fees to a Singapore company on which tax was not deducted at source. The AO held that the said consultancy fees were assessable as "fees for technical services" u.s 9(1)(vii) of the Act and that the failure to deduct TDS meant that the amount had to be disallowed u.s 40(a)(ia) of the Act. This was reversed by the CIT (A). On appeal by the department to the Tribunal, HELD dismissing the appeal:

While the consultancy fees may constitute "fees for technical services" u.s 9(1)(vii), it does not fall within the ambit of that term in the India-Singapore DTAA because it does not "make available any technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein". The services were simply consultancy services which did not involve any transfer of technology and so were not assessable as "fees for technical services".

The department's argument that if the sum is not assessable as "fees for technical services", it is assessable as "other income" Article 23 of the DTAA is not acceptable because that Article applies only to "items of income which are not expressly mentioned in the foregoing Articles of this Agreement". Article 23 does not apply to items of income which can be classified under Articles 6-22 whether or not taxable under these articles.

Law on taxability of “turnkey contracts” for offshore & onshore supply explained.

Dongfang Electric Corporation Vs. DDIT (ITAT - Kolkota)

The assessee, a Chinese company, entered into two contracts with WBPDCL, one for the offshore supply of equipment and the other for onshore supplies, design, engineering and construction etc. Separate consideration was specified for each activity. The assessee claimed, relying on Ishikawjima-Harima 288 ITR 408 (SC), that the profits from offshore supply was not taxable in India. The AO rejected the claim on the ground that the project was a “turnkey” one with “cross-fall breach clause” and “single point responsibility” and that the split contracts were entered into only for convenience. It was held that the project office PE played a role in the offshore supplies. He referred the matter of determination of ALP of the onshore supplies to the TPO. The additions were upheld by the DRP. On appeal by the assessee to the Tribunal, HELD:

While it is arguable that the observations in Vodafone regarding “looking at the transactions as a whole and not adopting dissecting approach” cannot be applied in all cases where separate contracts are entered into for offshore supplies and onshore services, the observations are applicable in cases where the values assigned to the onshore services are prima facie unreasonable vis-à-vis values assigned to the offshore supplies, which make no economic sense when viewed in isolation with offshore supplies contract. The transactions have to be looked at as a whole, and not on standalone basis, when the overall transaction is split in an unfair and unreasonable manner with a view to evade taxes. In order that such a situation can arise, it is sine qua non that while the assessee submits the bids for different segments (e.g. offshore and onshore) separately, these bids are considered together, as a single cohesive unit, by the other party, and this fact must be apparent from material on record. The fact that there is a “cross fall breach clause” which provides that a breach in one contract will automatically be classified as breach of the other contract give an indication that the “offshore supplies” contract and “onshore supplies” contract have to be viewed as an integrated contract, this fact by itself does not indicate that the onshore services and supplies contract is understated so as to avoid tax in the source country. That would be the situation in which while offshore supplies show unreasonable profits while onshore supplies and services result in unreasonable losses;

Fact that third party invoices are paid does not necessarily show “reimbursement”.

Van Oord ACZ Marine Contractors BV Vs. ADIT (ITAT Chennai)

The assessee, a Netherlands company, was awarded a dredging contract to be carried out at Port Mundra. It assigned the contract to its fully owned Indian subsidiary. It also entered into a “cost allocation agreement” under which it agreed to provide to the subsidiary all services necessary to execute the dredging contract in return for a reimbursement of the costs. It received ` 11.53 crores from the subsidiary towards invoices raised by third parties and claimed that as it was a “reimbursement of expenditure” incurred by the assessee it was not chargeable to tax. The AO & DRP assessed the receipts as “fees for technical services”. It was also held that the subsidiary was a “Dependent Agent Permanent Establishment”. On appeal by the assessee, HELD dismissing the appeal:

While it is true that reimbursement of expenditure is not income, the payment made by the subsidiary to the assessee cannot be regarded as a “reimbursement” because (a) the subsidiary had no technical expertise to carry out the contract and the assessee had rendered technical services to it such as arranging the dredgers from abroad & choosing appropriate parties to execute the work. (b) though it is claimed that the expenses were reimbursed at par with the invoices issued by third parties, there is nothing on record to show that the price negotiated between the assessee and the third parties are prices comparable to similar services provided by international parties.

It is not established that the assessee offered services to the subsidiary on cost to cost basis at best reasonable and competent prices available at that point of time. Therefore, an element of profit in the invoices raised by third parties cannot be ruled out even though what was paid by the subsidiary to the assessee is the amount reflected in the invoice. As the subsidiary had no technical expertise, the inevitable conclusion is that the assessee rendered technical services to its subsidiary and the payments are in the nature of fees for technical services;

The subsidiary constituted a dependent agent PE (DAPE) of the assessee because de facto the assessee was carrying on the contract work on behalf of the subsidiary and if the veil of the assignment contract be pierced, there is interlacing of activities and interlocking of funds between the assessee and the subsidiary in executing the dredging contract. There is a relationship of agency and a PE is created

Domestic tax

Rental Income from Commercial Complex is taxable as business income

Narayan Market Complex Vs. ITO (ITAT- Cuttack)

The assessee, a partnership firm constituted with the object of running and maintaining market complexes offered its income, in the form of rent from commercial organizations as business income after claiming deduction on account of expenses incurred in maintenance of commercial complexes. The AO, disallowed the assessee's claim and taxed the same as Income from House Property. Relying on facts that the bank took cognizance of the commercial viability of this project to grant loan; partners pooled their resources to repay the loan; and the assessee let out the property to the commercial organizations for earning income the ITAT has held that the income from letting out the property is to be taxed as business income.

S. 40(a) of the Act disallowance for non-deduction of tax is not invited in case of trust income.

Mahatma Gandhi Seva Mandir Vs. Deputy Director of Income-tax (ITAT -Mumbai.)

The assessee, a charitable institution engaged in carrying out religious and charitable activities falling within the ambit of s. 2(15) of the Act was granted registration u.s 12A as well as S. 80G by the competent authority.

During the course of assessment proceedings, the AO recorded a finding that the assessee failed to deduct TDS on certain amounts and accordingly disallowed the entire payments u.s. 40(a)(ia) of the Act. On facts the ITAT has held that s. 40 is applicable only when deductions under s. 30 to 38 are being made in computing the income chargeable under the head "profits and gains of business or profession" u.s 28. The exception in s. 40 is carved out, only for the purpose of s. 28 and not for computing the exemption of income of a charitable trust under section 11. The disallowance made u.s 40(a) of the Act will only go to enhance the business profit of an assessee whose income is assessable u.s 28 and not otherwise. Hence, provisions of s. 40(a) are not applicable in case of charitable trust or institution where income and expenditure is computed in terms of s.11of the Act.

Reinvestment can be done in joint names to claim exemption u.s 54F of the Act.

Ravinder Kumar Arora Vs. ACIT (ITAT – Delhi)

The assessee, an individual, earned LTCG from sale of land. Part of the sale proceeds were invested in a residential house property and accordingly deduction against taxability of capital gains u.s. 54F was claimed. Since the new house property was registered in the joint names of the assessee and his wife, the AO allowed deduction only to the extent of 50% of the investment made. The ITAT has held that there was no dispute to the fact that whole of the consideration for investment in new house property was paid by the assessee himself. His wife had not contributed a single penny. Further, before the Tribunal, the assessee had by way of an affidavit stated that his wife's name was stated in the purchase deed only for 'Shagun' purposes and also because the assessee was physically handicap. Therefore, following the judgment of the Madras High Court in the case of Third ITO v. S. Vardarajan [1989] [33 TTJ 46] (Mad.) the assessee was to be treated as a real owner of whole of the property purchased and the assessee was entitled to the benefit of s.54F of the Act.

Expenditure on purchase of software applications is revenue expenditure.

CIT Vs. Amway India Enterprises (High Court – Delhi)

In the instant case, the issues before the High Court were:
Treatment to be accorded to the expenditure incurred by the assessee on purchase of licensed software applications, purchased by the assessee company. – The AO considered the same as capital expenditure and accordingly allowed depreciation at the rate of 25%.

On second appeal, the Tribunal held:
Expenditure on purchase of licensed software is revenue in nature and hence allowable. Expenditure on account of maintenance and repairs of leased property is revenue in nature and hence fully allowable. Thus, the Tribunal allowed all expenses incurred on improvement of leased property except expenditure on account of air-conditioning unit and furniture. On further appeal by the Department, the High Court upheld the decision of the Tribunal.

S. 54EC of the Act stipulates investment limit and not deduction limit, deduction of ` 50 lacs to be allowed for investment by each minor child.

DCIT Vs. Rajeev Goyal (ITAT – Kolkota)

In the instant case, the assessee, an individual, earned LTCG from sale of shares. Assessee's minor daughter and son also earned LTCG on same account. The assessee, his minor son and minor daughter, invested a sum of ` 50 lakhs, `. 39.50

lakhs and `.49.50 lakhs, respectively, in REC bonds with a view to avail benefit of s. 54EC. The AO invoked the clubbing provision under 64(1A) and clubbed LTCG earned by the assessee's minor children in his hands, but limited deduction u.s 54EC only to investment of ` 50 lakhs in assessee's name and did not allow deduction for investment in REC bonds made by his minor children citing the investment limit of ` 50 lakhs imposed by the proviso to section 54EC(1) of the Act.

On appeal, the Tribunal held that:
As per the definition of 'person' u.s 2(31), a minor is an assessable entity even though his income is clubbed u.s 64(1A) of the Act in the hands of his parents. A minor is a person distinct from his parents and is also an individual. There is no bar in separately allotting bonds upto ` 50 Lakhs to each such person.

U.s 54EC, there is no limit mentioned on the deduction allowable to an assessee. (The limit of ` 50 lakhs is ceiling on investment that may be made by an assessee and not a ceiling on deduction that may be allowed to an assessee).
S. 64(1A) said that 'In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child.' The word 'such' means the total income of the minor, because 'such' is preceded by the word total income.

Depreciation is a statutory allowance, and not expenditure to attract sec.14A disallowance.

Vishnu Anant Mahajan Vs. ACIT, (ITAT – Ahmadabad) [Special Bench]

The assessee, an individual, derived income by way of share in profit from a partnership firm, capital gains, interest, and dividend and house property. The assessee claimed deduction on account of depreciation on its motor car. The AO as well as the CIT(A) recorded a finding that 76% of the total income earned by the assessee was in the nature of exempt income and accordingly, by operation of s. 14A of the Act, only 24% of the depreciation claimed by the assessee should be allowed as a deduction.

On appeal, the Tribunal referred the matter for consideration of the Special Bench. It has been held that: In the facts of the present case, provisions contained in s. 14A of the Act will come into operation and any expenditure incurred in earning the share income will have to be disallowed.

However, s. 14A of the Act uses the words "expenditure incurred by the assessee in relation to income". A statutory allowance u.s 32 is not expenditure.

Therefore, following the decision of the Division Bench in the case of Hoshang D. Nanavati the Tribunal held, that though the AO/CIT (A) were right in holding that the provisions of s. 14A would get attracted to the facts of the assessee's case, they failed to appreciate that s. 14A of the Act applies only in respect of expenditure and not statutory allowances such as depreciation.

Section 206AA is unconstitutional - PAN law read down to not to apply to assessee's without taxable income.

Smt. A. Kowsalya Bai Vs. Union of India (High Court – Karnataka)

The Hon'ble Karnataka High Court, on a petition made by small investors held;
S. 206AA of the Act makes it conditional for every person who wishes to have a transaction in bank/FIs including small investors/depositors (i.e., investors/depositors with income

below taxable limit) to invariably have a PAN. This runs counter to s. 139A of the Act according to which such persons need not have a PAN.

S. 206AA hinders and discourages such small investors from coming forward to invest their money for secured reasons and their secured future. This is also not desirable for country's economy.

Further S. 206AA of the Act is unreasonable as it invalidates Form 15G which does not mention PAN. S.206AA of the Act which overrides s. 139A of the Act is discriminatory against small investors. S. 139A of the Act has withstood scrutiny of Article 14 of the Constitution for reasonableness.

If no charge of interest in assessment order, same can't be charged in notice of demand.

Dehradun Club Ltd. Vs. CIT (High Court – Uttarakhand)

The AO u.s 143(3)/148 of the Act directed for initiation of penalty proceedings u.s 271(1)(c) and 271(b) against the assessee. A notice u.s 156 of the Act was issued to the assessee on the ground that advance tax was not paid within stipulated time demanding interest u.s234B. An application u.s 154 was filed by the assessee for rectification of the order on the ground that there was a mistake apparent from the record as interest u.s 234B could not be charged in absence of any direction to that effect in the assessment order. However, the application of the assessee was rejected by the AO.

On appeal the High Court has held that:
The tax, interest, penalty, or fine is payable in consequence of an order passed under the Act, namely, the assessment order, was clearly indicated u.s 156. There has to be a specific order passed by the AO charging interest and, only thereafter, a notice of demand levying interest could be issued. The proposition that the provision of charging interest u.s 234A, 234B & 234C was mandatory, but, at the same time, the assessment order must contain the imposition of interest and, only thereafter, a notice of demand could be issued u.s156. When the assessment order u.s 143(3) does not indicated that interest would be leviable, notice of demand u.s 156 levying interest would be wholly illegal since interest was payable in consequence of an assessment order passed as is clear from s. 156. A notice of demand u.s156 could be issued only when the assessee had been charged with interest under a particular section of the Act. Therefore, if assessment order does not specify charging of interest, then it could not be charged or levied u.s 156 of the Act.

Delhi HC upholds reopening of assessment in UN Oil for Food Programme scam.

Aditya Khanna Vs. ACIT, (High Court – Delhi)

The petitioner, a non resident filed a return of income in the status of a non-resident and declared property income and interest income therein which was accepted u.s 143(1) of the Act. The impugned notice was issued u.s 148 of the Act, calling upon the petitioner to deliver a return of income for the assessment year 2002-03 on the ground that income chargeable to tax had escaped assessment.

The AO stated that the petitioner had earned commission income from a business which was controlled from Indian territory and there was also evidence to show that certain communications had been addressed to the petitioner in India.

On appeal, it has been held that:
The business of procuring oil contracts and payment of commission for services rendered by the petitioner were all controlled from India and, therefore, the petitioner is answerable to the income on the basis of S.9(1)(i) as income accruing or arising, whether directly or indirectly, through or from any business connection in India. Accordingly, the re-opening of assessment and exercise of jurisdiction u.s 147 r.w.s 148 have been held to be valid.

Antique items are for personal impressions but can't be personal effects; transfer is subject to capital gain.

ACIT Vs. Faiz Murtaza Ali (ITAT- Delhi)

The assessee had received various items by way of gift and sold personal effects for a sum of ` 39,47,136. As per the view of ITAT, the assessee was not able to brought any evidence on record to show that the money was received on or before 3.4.2001. Hence, ld. CIT(A) was right in held that, nature and source of this money has been proved along with the fact that this money was available with the assessee on the date of deposit in the bank. In the light of the decisions in Maharaja Rana Hemant Singh Ji Vs. CIT [1976] 103 ITR 61 (SC); & R. Ramanathan Chettiar Vs. CIT [1985] 20 Taxman 52 (Mad.), when the assessee failed to establish the identity of the items sold individually to each buyer, which were claimed exempt u.s 2(14) as also failed to establish as to how and where these items were kept by him prior to sale, the AO concluded that the assessee had not been able to establish genuineness of his claim for exemption u.s 2(14) of the Act.

On appeal, it held that in the absence of nature and full description of each of the household articles or furniture and collector items in the confirmation of sales nor any evidence of intimate connection between the effects and the person of the assessee having been placed before the Hon'ble Tribunal, its unable to accept the plea of the assessee, that items sold were personal effects within the meaning of provisions of sec. 2(14) of the Act.

Law of limitations binds everybody equally, including Government.

Office of the Chief Post Master General Vs Living Media India Ltd - (Supreme Court).

The appellant, a Government department, filed instant appeal against the order passed by the High Court with a delay of 427 days. Being a Government department, the appellant contended that delay in filing appeal might be condoned and an opportunity might be given to put-forth its stand as to the impugned judgment of the High Court.

On appeal, it was held that:

The dates mentioned in the affidavit, clearly showed that there was delay at every stage and except the mentioned dates of receipt of the file and the decision taken, there was no explanation as to why such delay had occasioned.

In the absence of plausible and acceptable explanation, delay was not to being condoneded mechanically merely because the Government or a wing of the Government was a party before the Court. Though in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, in the facts and circumstances, the advantage of various earlier decisions cannot be taken by the Department. Thus, the law of limitation undoubtedly bounds everybody including the Government.

Considered the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, it has to be held that the Department has been miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals were liable to be dismissed on the ground of delay.

Snippets

"Revive the animal spirit in the country's economy and reverse the climate of pessimism." - PM in his first message after taking over the reins in the Finance Ministry.

Direct Tax Collection for FY 12 falls short of the target

The government has fallen short of its direct tax collection target of ` 5 lakh crores for the financial year 2011 -12 even after revising the projections thrice as the economic slowdown impacted companies which reported a marginal increase in profits in the fourth quarter of the last fiscal. The all-India tax collection, as on April 11, was below `4.95 lakh crores according to figures available with the income-tax department.

Due date for filing returns of liaison office extended to 30.9.12.

The CBDT has extended the due date for filing of the newly introduced Form 49 being the return of liaison office for the financial year 2011/12 from 30.5.12 to 30.9.12.

High-income individuals, HUFs also under mandatory digital return regime

Vide the CBDT notification 14 of 20 12 dated 28.3.12. individual's and HUF's having total income exceeding Rs. 1 million will have to compulsorily file income tax return electronically. This applies to returns for assessment years 2012-13 onwards.

Mandatory tax returns by residents holding assets abroad.

By virtue of the recent amendments introduced in the income tax law residents will henceforth have to file the tax return where they hold any foreign asset (including financial interest in any entity) or are signing authority in any account located outside India even though they do not have taxable income to report. The CBDT has recently amended Rule 12 of the Income-Tax Rules, 1962 and released the new income-tax return forms to capture the relevant details for the financial year 2011-12 in line with the above proposed amendment.

Eight I-T Units Abroad to Start Work Soon.

The government has deputed eight senior IRS officers to officiate as First Secretaries in the newly created Income Tax overseas units in the US, the UK, Germany, France, Netherlands, UAE, Cyrpus and Japan as part of efforts to curb the problem of black money and illegal funds stashed away abroad.

India and Netherlands sign Protocol Amending DTAC.

The Convention between the Kingdom of Netherlands and the Republic of India for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital was signed on 30th July, 1988 (DTAC). Both India and Netherlands have concluded a Protocol to amend the Article 26 of the DTAC concerning Exchange of Information to bring it in line with the international standards.

India Signs Agreement with Bahrain for Exchange of Information with Respect to Taxes

India signed an Agreement with the Government of the Kingdom of Bahrain for the Exchange of Information with respect to taxes (TIEA), here yesterday. The Agreement is based on international standards of transparency and exchange of information. It incorporates provisions for effective exchange of information including banking information between tax authorities of the two countries.

Disclaimer

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