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SNR & COMPANY
CHARTERED ACCOUNTANTS

Income Tax Bulletin

January 2022

JUDICIAL UPDATES

1. *Revisionary jurisdiction u/s 263 not fettered during pendency of appeal before CIT(A):*

Case of: **JR Industries v. P.C.I.T**
Decision by: **ITAT, Jaipur**
In favour of: **Assessee**

- Assessee-Company was subjected to reassessment for AY 2011-12 on the basis of information received from Investigation Wing over bogus sales made through accommodation entries which was appealed before CIT(A).
- During the pendency of the appeal, PCIT initiated revisionary proceedings u/s 263 and directed the AO to decide the matter afresh on certain other issues which were not subject matter of appeal before CIT(A).
- Assessee raised the matter before ITAT & submitted that in view of pendency of Assessee's appeal before the CIT(A), the PCIT lacked jurisdiction to revise the assessment order.
- ITAT, in the light of Explanation 1(c) to Section 263, observed that the use of words *'considered decided'* leaves no room for doubt that if some issue is decided by CIT(A) in an appeal against the assessment order passed by the AO, then, that issue cannot be the subject matter of proceedings u/s 263 of the Act.
- However, ITAT opined that where an issue in the assessment order was neither agitated before the CIT(A) nor considered by him, that portion does not merge with the CIT(A)'s order, thus would enable the PCIT to revise the order u/s 263 with respect to that particular issue

Read Full Judgement: JR Industries v. PCIT

SNR's Take:

The Tribunal has analyzed the scope of revisionary powers entrusted upon the CIT to conclude that Explanation 1(c) to Sec. 263 is based on the Doctrine of Merger, in accordance with which there cannot be more than one decree or an operative order governing the same subject-matter at a given point of time & that this doctrine shall be applied issue-wise rather than order-wise.

2. *Addition u/s 69A on excessive stock in books cannot exceed profit element:*

Case of: **DCIT v. Mahendra Brothers Exports Pvt. Ltd**
Decision by: **ITAT, Mumbai**
In favour of: **Assessee**

- Assessee was engaged in the business of manufacturing & trading of rough & polished diamonds & was subjected to a search. During the course of the search, the stock of cut & polished diamonds found physically as valued & quantified by Government approved valuer was 1,16,968.04 **carats** was at variance with the stock register in which it was 1,17,016.98 **carats**. The assessee pleaded that the difference was due to error in weighing of the same.

- Revenue disregarded the assessee's claim & made an addition of Rs. 11.63 lakhs (being the value attributed to the shortage), as sales made out of books u/s 69A, which was also upheld by the CIT(A).

- On appeal, ITAT found that the physical stock was lower than the book stock by 48.94 carats & remarks that it proves that Assessee could have made sales out of books & holds that only the profit element embedded in the sale can be taxed.

- ITAT further stated that Revenue's argument of adding the entire value attributable to the shortage of stock can be accepted when there is excess stock found physically during the search in which case the assessee needs to explain the purchases to avoid additions u/s 69C.

Read Full Judgement: DCIT v. Mahendra Brothers Exports (P) Ltd.

SNR's Take:

This is a welcome judgement by the Tribunal providing some respite to the taxpayers by holding that even if the additions are being made u/s 69A still Income Tax can be applied only on the income (profit) part rather than on the entire unexplained assets.

3. *Notice u/s 129 after transfer of records does not validate reassessment if notice u/s 148 by jurisdictional AO is absent:*

Case of: **AB Sciex Pte. Ltd v. ACIT (International Tax)**
Decision by: **ITAT, Delhi**
In favour of: **Assessee**

- Assessee was engaged in the business of manufacture & sale of scientific research instruments & the products sold by Assessee also required provision of maintenance services to its customers worldwide, including India. On the basis of information that assessee entered into an agreement for provision of service with respect to its products & did not offer the resultant income to tax in India, the revenue issued a notice u/s 148 on 31-03-2019.

- The assessee replied on 18-04-2019 stating that correct jurisdictional AO was not ITO, Ward 1(1) International Taxation, Banglore, but ACIT International Taxation, Circle 1(1)(1), New Delhi. The Assessee also contended that it did not have a PE in India & Routine Maintenance services to Indian customers are not subject to tax in India.

- On appeal, ITAT found that reasons recorded for re-opening Assessee's case were recorded by the ITO(IT)W-1(1) Bangalore & that the notice u/s 148 was also issued by him.

- ITAT further held that merely transferring the assessment records to the ACIT (IT), Circle 1(1)(1), New Delhi & thereafter issuing notice u/s 129 to the assessee cannot be construed as the proper implementation of the reopening of the assessment proceedings u/s 148 & states that the jurisdictional AO at New Delhi merely passed assessment order after the transfer of records without issuing a valid notice under Section 148 under his name, which was the mandatory procedure under the Act.

Read Full Judgement: AB Sciex Pte. Ltd. v. ACIT (IT)

SNR's Take:

The Tribunal has rightly pulled up the revenue for passing orders without following the necessary legal procedures. Section 148 clearly mandates that a fresh notice for reopening shall be issued in case of change in incumbent, the absence of which led to declaration of assessment as void-ab-initio.

4. *Interest on export incentive refund is compensatory & not penal, hence allowable u/s 37:*

Case of: **DCIT v. Attire Designers Pvt. Ltd**
Decision by: **ITAT, Delhi**
In favour of: **Assessee**

- Assessee was engaged in the business of manufacturing, trading & export of readymade garments. During assessment proceedings, Revenue held that Rs.93.61 lakhs charged by the DGFT was in the nature of penalty, and therefore, not allowable in view of explanation to Section 37(1).
- On appeal, CIT(A) noted that Assessee received incentive of Rs. 1.68 Cr on export of technical textile, which Assessee was later on required to refund since certain exports did not fall in technical textile category for which the incentives were given. It, therefore, held that the interest expenses to be allowable & directed the Revenue to delete the addition.
- On appeal, ITAT found that DGFT had communicated to the assessee that it had obtained benefit of Rs.1.68 Cr. under 'focus product segment' for the export shipment effected but since those exports were not having the attributes of technical textile, the amount was recoverable, and on which the assessee was required to pay interest @15%.
- ITAT further noted that the communication from DGFT requesting refund of the incentive amount nowhere mentioned that assessee had committed any offence under the Foreign Trade Regulations.

Read Full Judgement: DCIT v. Attire Designers Pvt. Ltd.

SNR's Take:

The Tribunal has reiterated a long-stated fact that interest being compensatory in nature cannot be clubbed with the term 'penalty' & thus, cannot be disallowed owing to the provisions of section 37. The Tribunal has rightly pointed out the fact that DGFT has nowhere stated that assessee had committed any offence under the Foreign Trade Regulations.

5. *Information in Form 10CCB not sacrosanct, requires verification for allowability of deduction u/s 80-IB:*

Case of: **DCIT v. Purvankara Projects Ltd**
Decision by: **ITAT, Bangalore**
In favour of: **Revenue**

- Assessee-Company claimed Rs.80.75 Cr. as deduction u/s 80-IB in the original return of income filed for AY 2010-11, after setting off losses from some of the eligible projects to the tune of Rs.19.61 Cr from the net profit of Rs.100.20 Cr derived from all the eligible projects. Subsequently, the assessee revised its returns to claim deduction u/s 80-IB without setting off such losses.

- Noting that assessee did not maintain separate accounts for various projects and failed to show absence of interlacing or interdependence between various units for their categorisation as separate undertaking, revenue recomputed the income after setting off the loss from eligible projects.

- CIT(A) allowed Assessee's appeal by holding that the assessee submitted project-wise Form 10CCB, P&L Account, & the books of account & that the audit of project-wise P&L account was not necessary, especially, when entire accounts were audited.

- ITAT observed that Revenue gave a categorical finding that the computation sheets of profitability of each project were not reliable and not verifiable, and it was the duty of the Assessee to produce verifiable data to claim deduction u/s 80-IB.

- Thus, ITAT held that CIT(A)'s order holding that the data furnished by the Assessee in Form 10CCB for each project need not be verified is improper & that the data furnished by the assessee is required to be verified by the Revenue & it cannot be considered as sacrosanct. Thus, it is not possible to grant deduction u/s 80-IB without verification.

Read Full Judgement: DCIT v. Purvankar Projects Ltd.

SNR's Take:

It has always been upon the revenue to dive deep into the unit-wise financials of the units claiming profit-linked deductions. Therefore, the contention that there is no need to verify the contents of Audit Report in Form 10CCB does not hold good.

6. *Penalty u/s 271AAB mandatory, not subject to reasonable cause plea u/s 273B:*

Case of: **N. Santhanam v. ACIT**
Decision by: **ITAT, Chennai**
In favour of: **Revenue**

- Assessee was subjected to search during which the undisclosed income of Rs.1 Cr was accepted & offered to tax for AY 2014-15. Since, assessee has already filed his return, he filed a revised return including the amount disclosed during search. The returned income was accepted by the AO while passing the order u/s 143(3). However, penalty proceedings u/s 271AAB were initiated.

- Assessee challenged penalty proceedings on the ground that admission of undisclosed income without any reference to incriminating material does not warrant levy of penalty u/s 271AAB & sought refuge in the provisions of section 273B which states that no penalty shall be levied unless there was reasonable cause for such failure. Revenue rejected Assessee's explanation & held that penalty u/s 271AAB is mandatory when the Assessee had admitted additional income during the course of search in the statement recorded u/s 132(4).

- On appeal, ITAT observed that legislature in its wisdom had consciously omitted to include Section 271AAB of the Act in the provisions of section 273B. Hence, there is no requirement to look into any reasonable cause adduced by the assessee warranting grant of any immunity from levying of penalty u/s 271AAB.

- ITAT further observed from Section 271AAB that penalty is mandatory where the Assessee has admitted undisclosed income during the course of search in the statement recorded u/s 132(4).

Read Full Judgement: N. Santhanam v. ACIT

SNR's Take:

Tribunal has adjudicated upon a very contentious issue as to whether the provisions of waiving penalty for showing reasonable cause of failure can be applied upon the search & seizure procedure. Going by the provisions of section 273B, it has been held that penalty u/s 271AAB can never be waived & hence, it is a mandatory penalty.

CIRCULARS/ NOTIFICATIONS

1. *CBDT notifies rules for implementing e-verification scheme:*

Section 135A was inserted in Income Tax Act, 1961 for the purposes of calling for information u/s 133, collecting certain information u/s 133B, or calling for information by prescribed income-tax authority u/s 133C, or exercise of power to inspect register of companies u/s 134 by eliminating the interface between income-tax authority and the assessee. To give effect to the scheme, CBDT has notified E-Verification Scheme, 2021.

Read Notification: 137/2021

2. *CBDT notifies Faceless Appeal Scheme, 2021:*

In supersession of Faceless Appeal Scheme, 2020, CBDT has now notified Faceless Appeal Scheme, 2021. The most important aspect of the scheme is that the Commissioner (Appeals) shall allow the request for personal hearing via video conference and communicate the date and time of hearing to the appellant via the National Faceless Appeal Centre.

Read Notification: 139/2021

COMPLIANCE CALENDAR

Date	Particulars
07-01-2022	Due date for deposit of tax deducted/ collected for the month of December, 2021.
14-01-2022	Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB and 194-M in the month of November, 2021
15-01-2022	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2021 has been paid without the production of a challan
15-01-2022	Quarterly statement of TCS for the quarter ending December 31, 2021
30-01-2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB and section 194-M, in the month of December 2021
30-01-2022	Quarterly TCS certificate in respect of quarter ending December 31, 2021
31-01-2022	Quarterly statement of TDS for the quarter ending December 31, 2021
15-02-2022	The due date for filing of Income Tax Return for AY 2021-22 for Companies & those required to get their accounts audited under Income Tax Laws extended from 15-01-2022 to 15-02-2022.

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