DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

1. Reassessment – Notices issued on or after 1st April, 2021 to be governed by the amended provisions of section 148 and 148A – Notifications issued allowing time upto 30-6-2021 held to be ultra vires and quashed.

Finance Act 2021 has introduced new scheme of reassessment with effect from 1st April, 2021. The new scheme has new provisions / procedures and time limits. Reassessment notices issued on or after 1st April, 2021 must comply with new procedure/provisions/time-limits. Neither the Finance Act, 2021 nor section 3(1) of the Relaxation Act, 2020 delegate power to the Central Government to defer applicability of new reassessment provisions/procedure enacted by Finance Act, 2021. Therefore notifications 20/2021 and 38/2021 extending time limit for reopening of assessment from 31st March 2021 to 30th June 2021, deserve to be quashed as ultra vires section 3(1) of the Relaxation Act, 2020. Reassessment notices issued, under old provisions within such extended time-limits, from 1-4-2021 to 30-6-2021 based on these Notifications deserve to be quashed if they are time-barred as per the new provisions/procedure/time-limits

Mon Mohan Kohli v. Assistant Commissioner of Income-tax - [2021] 133 taxmann.com 166 (Delhi) ; Bpip Infra Pvt. Ltd. V. ITO (2021) 133 taxmann.com 48 (Rajasthan)

2. Sec. 194H of the Act – Incentive on Distribution of Lottery Tickets – No Liability to deduct TDS by the wholesale distributor of Lottery

Assessee was a proprietor doing business as a wholesale dealer of lottery tickets. The assessee was engaged in the said business as a Stockist to sell lottery tickets of various government/quasi-government agencies and State governments. The Assessing Officer (AO) disallowed the deduction of the sum paid to agents towards incentive for the prize money realized from the tickets sold by them on the ground that the relationship between the assessee and the end buyers of lottery tickets is the Principal and Agent and accordingly TDS was required to be deducted on such incentive. Both CIT (A) and Tribunal accepted the contention of the assessee that she was not the end recipient's lottery ticket seller but was merely acting as a post-office between the State government and the buyers of lottery tickets.

On further appeal by the revenue, the Kerala High Court held that assessee acts as a post-office by receiving counterfoils of prize-winning tickets sold by different retailers in the organization of lottery business presented to the State government, and the prize/incentive/bonus received from the government is transferred to retailers. The person responsible for making the payment is the government, and the government, after affecting TDS, has paid the amount to the assessee towards prize incentive, etc. The assessee has collected the amount and claims to have made over the incentive to the end retailers. The assessee was not obligated to pay towards commission, etc. to any agents.

PCIT v. Usha Murugan (2021) 133 taxmann.com 127 (Kerala)

3. Deduction in respect of Housing Project – Sec. 80-IB of the Act

Assessee was a builder and was engaged in development of a housing project consisting of seven buildings and a parking slab which was considered as the eighth building. Assessee obtained a completion certificate issued by local authority in respect of said seven buildings within stipulated time prescribed under section 80-IB. Later on the plan was modified to include the eighth building also as a residential building comprising of 48 residential units. The assessee claimed deduction u/s. 80-IB(10) in respect of the project. The assessing officer denied the deduction u/s. 80-IB on the ground that the completion certificate of the project did not show the eighth building and thus it was a partial completion certificate which did not permit deduction to the assessee. Before the CIT (A), the assessee contended that the eighth building was to be considered as a separate project and it was not a part

of the original project as its plan was approved much later. The CIT (A) allowed the appeal of the assessee. The appeal filed by the department before the Tribunal was dismissed. On further appeal to High Court by the revenue, the High Court held that the eighth building was not a part of the original project and that undisputedly entire housing project excluding the eighth building was completed within stipulated period and completion certificate was also received for the same within the time prescribed u/s. 80-IB(10). Considering these facts, the assessee was held to be eligible for deduction in respect of the original housing project excluding the eighth building.

Principal Commissioner of Income-tax v. Prathamesh Constructions – (2021) 133 taxmann.com 74 (Bom.)

4. Belated refund claim for Non-filer of Income-tax Return – Sec. 237 of the Income-tax Act

No Income-tax Return was filed by the applicant within the time stipulated u/s. 139(1) / 139(4). The applicant has also not filed claim for refund otherwise than through Return as provided in the CBDT circular No. 9 / 2015. Refund claim was made for the first time after the 6 years time limit as specified in the said circular. The same was not considered by the assessing officer for the reason that it was delayed beyond time.

On writ petition filed by the assessee, the Madras High Court held that a reading of Section 237 makes it clear that there is no limitation prescribed for filing a claim for refund of income tax. The 6-years time-limit specified in CBDT's Circular No.9/2015, for considering any refund claim other than through ITRs filed u/s 139(1)/(4), would only apply if the application u/s 119 was made to claim exemption for the first-time after the returns were filed in time and after the period prescribed for revising the assessment had expired (6 years time-limit for re-assessment under old sections 147 to 151) and the assessment had attained finality. However, in a case where no Return was filed by applicant within the time stipulated under section 139(1)/139(4) and refund claim was made by him for the first-time after the 6-years time, the assessing officer must consider the refund claim on merits u/s 237 r/w section 119 and assess the tax due and determine the amount refundable. The non-issue of re-assessment notice within the old 6 -years time-limit will not be held to the detriment of the assessee. The AO would, however, be at liberty to impose any penalty/interest applicable under the law for non-filing of ITR within the time-limit stipulated u/s 139.

R. Pannerselvam v. Principal Commissioner of Income-tax (2021) 133 taxmann.com 228 (Mad.)

5. Sec. 40A(3) of the Act – Purchase of Agricultural Land by making cash payment in excess of specified amounts

The assessee had purchased agricultural land by making cash payments in excess of the specified amounts from certain persons who did not have bank accounts or easy access to banking services. The sellers pressed for urgent payments to be made, if the sale were to fructify. During the course of the assessment, the assessee filed the affidavits of such sellers. The true identity of the sellers was disclosed by virtue of the registered sale deed and there was nothing to doubt the genuineness of the transactions. The assessing officer, however, made disallowance u/s. 40A(3) of the Act which was confirmed by the CIT (A) and the Tribunal.

On appeal to the High Court, the High Court took cognisance of the facts and also the ratio of the Supreme Court judgment in the case of Attar Singh Gurumukh Singh v. ITO (1991) 191 ITR 667 (SC), where the Hon. Supreme Court has observed that : "The terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee.". On the basis of the facts, the High Court held that the assessee has been able to prove the bona-fide of the transactions and accordingly allowed the claim of the assessee.

Smt. Sangeeta Verma v. Commissioner of Income-tax (2021) 133 taxmann.com 97 (All.)

6. Revision of order prejudicial to Revenue – Sec. 263 of the Act - Issue which is beyond the scope of rectification-Commissioner cannot revise under section 263 of the Act.

The Assessing Officer allowed the rectification application of the assessee claiming losses to be carried forward. The PCIT held that the AO had not examined this claim in sufficient detail and that the loss cannot be allowed to be carried forward. On assessee's appeal challenging the revision order u/s. 263 of the Act, the Tribunal held that the quantification of loss is well beyond the limited scope of "mistake apparent on record" under section 154 of the Act and the same could not have been disturbed in the proceedings under section 154 of the Act. The Tribunal held that something which cannot be done under section 154 of the Act, cannot be done under section 263 read with section 154 of the Act either. Accordingly, the revision order was held to be not valid.

Cargo Service Centre India Pvt. Ltd. V. DCIT (2021) 132 taxmann.com 237 (Mum.)

7. Black Money (Undisclosed Foreign income and Assets) and imposition of tax Act, 2015 - Undisclosed asset located outside India – Applicability of the Statute – New legislation also operates for the accounts not in existence at the time when Black Money Act, 2015 came into force

The assessee closed their undisclosed foreign bank accounts in 2008 and 2011.The Black Money Act came into force in 2015. It was the contention of the assessee that the asset which did not exist at the time the new law came into force cannot be brought within the ambit of the new law. The Tribunal held that the important date is the date on which the undisclosed income / asset comes to the notice of the Department. Further held that no deduction shall be allowed with respect to the undisclosed bank account while computing the additions under the Black Money Act, 2015.

Rasesh Manhar Bhansali v. ACIT - BMA Nos. 03 & 05/Mum/2021 – order Dt. 2-11-2021

8. Unexplained investments – Sec. 69 of the Income-tax Act – On money paid by Non-resident - cannot be taxed under section 69 of the Act-DTAA India -UAE. [S. 132(4), Art. 22]

The assessee was a non-resident Indian. The assessee had paid cash amount as on money to certain builders in India. The assessing officer treated the cash amount as unexplained investment and taxed the same u/s. 69 of the Act.

Where the assessee is a non-resident Indian, the assessee had paid cash amounts, as 'on money' to certain Builders in India. This amount was treated as an "unexplained investment" under section 69 of the Act. The appeal filed by the assessee was allowed by the CIT (A). On further appeal by the revenue, the Tribunal observed the fact that the on money paid were invested out of incomes generated in UAE. Since the income was not generated in India, applying the provision of Article 22 of the DTAA between India and UAE, the Tribunal held that the same can be taxed only in jurisdiction of residence i.e. UAE and not in India. The Tribunal confirmed the order of CIT(A) deleting the addition.

ITO Vs. Rajeev Suresh Ghai - ITA No. 6290/Mum/2019 – order dated 23-11-2021

9. Continuation of Registration u/s. 12A and 12AA of the Act – Charitable Purpose – Sec. 2(15) of the Act

Assessee-trust had made certain amendments to its Memorandum of Association. The Trust filed application seeking continuation of registration under section 12A after the amendments. The Principal Commissioner rejected application holding that in view of amendment to section 2(15), assessee could not be allowed registration inasmuch as amendments in Memorandum of Association were to facilitate conducting business of profit by commercial exploitation of game of cricket through franchisee ownership in Indian Premier League (IPL) tournament. On appeal to the Tribunal, the Tribunal held that merely because IPL tournament was structured in such a manner that made it more popular, entertaining, resulting in more sponsorships and greater mobilization of resources, basic character of activity of popularizing cricket would not be not lost. Further since operational model of IPL provided greater economic opportunities to all those associated with that tournament and mobilized greater financial resources for popularising cricket, as long as purpose for which all funds at disposal of assessee-trust, BCCI, including additional funds generated from IPL, were employed for promoting cricket, activities of assessee could not be said to be of commercial nature. In view of this, the Tribunal held that the assessee was entitled for continuation of registration under section 12A of the Act.

Board of Control for Cricket in India v. Pr. CIT (2021) 132 taxmann.com 132 (Mum.)

10. Compensation received from builder for failure to deliver flat in time – taxable under the head Capital Gains

Assessee entered into a Builder-Buyer Agreement (BBA) for purchasing a villa. Possession of same was not handed over to assessee within the stipulated time. Due to the delay in possession, the agreement was cancelled. The assessee received certain amount as compensation on cancellation of the agreement. This was reflected as capital receipt by the assessee and offered to tax as capital gain u/s. 45 of the Act. The same was accepted by the assessing officer in the regular assessment. The CIT invoked the powers u/s. 263 of the Act on the ground that the compensation was revenue in nature and therefore taxable as Income from Other Sources. The CIT further held that the transaction of making investment was a sham transaction and colorable device with a view to reduce the tax liability.

On appeal by the assessee, the Tribunal held that the assessee had made investment for specific purpose to acquire the villa which is a capital asset. The assessee had acquired a legal right as per the agreement. Therefore, the amount received as compensation for cancellation of such right would amount to capital receipt u/s. 2(47) of the Act. The agreement had put a contractual obligation on the builder to pay the compensation to the assessee on account of non delivery of the villa. The compensation was received on the basis of arbitration award which was final and binding on the parties and the same was enforceable as it was the Court's Decree. Therefore, there was no justification to hold that transaction was colored and sham.

Smt. Abha Bansal v. PCIT - [2021] 132 taxmann.com 231 (Delhi - Trib.)