DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

Black Money Act: Asset not existed at the time when new law came in effect

A bank account abroad or any unaccounted asset abroad, which did not exist as at the point of time when the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 came in force, i.e. 1st July 2015, can be assessed under the said legislation

An undisclosed foreign bank account per se can indeed be treated as an asset under section 2(11) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015

The provisions of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 can indeed be pressed into service in respect of an undisclosed foreign asset or income even if it was already in the knowledge of any Governmental authorities, other than the jurisdictional Assessing Officer, as at the point when the said legislation came into force.

Rashesh Manhar Bhansali v. ACIT [2021] 132 taxmann.com 20 (Mumbai - Trib.)

Continuity of the Registration of Trust

So far as registration under section 12 AA is concerned, Section 2(15) has no application. The proviso to Section 2(15) coming into play is not denial of registration under section 12A or 12AA but denial of benefits of exemption 11 under section 13(8).

Merely because a sports tournament is structured in such a manner so as to make it more popular, resulting in more paying sponsorships and greater mobilization of resources, the basic character of the activity of popularizing cricket is not lost. It is indeed possible that the predominant object remains the promotion of cricket but that activity is done in a more effective and financially optimal manner, and that there is no conflict in the cricket becoming more popular and the cricket becoming more entertaining. It results in providing significant economic opportunities to those associated with the holding of the IPL tournament and, in the process, enriching the resources of the assessee trust. As long as the object of promoting cricket remains intact, and that continues to be the predominant object, the assessee cannot be said to be not following the object of promoting cricket, just because the operational model of a cricket tournament, whether IPL or any other tournament, is more entertaining, more economically viable, provides greater economic opportunities to all those associated with that tournament, and mobilizes greater financial resources for popularising cricket. The purpose for which all the funds at the disposal of the assessee trust, including the additional funds generated by holding the IPL tournament, are employed is certainly for promoting cricket, and that is what really matters. Improvising the rules of the game, adding entertainment value to it and making it economically attractive, may be a purist's nightmare but the same factors can also be viewed as radical and innovative ideas to popularise a game- the very raison d'etre of an institution like BCCI. Board of Control for Cricket in India v. PCIT [2021] 132 taxmann.com 132 (Mumbai - Trib.)

143(3), 144B Assessment under faceless regime without issue of show cause notice

The assessment order that there are variations from the return filed by the assessee by containing additions/disallowances. The final assessment order is not made in accordance with the procedure laid down under section 144B (xvi)(b) of the Act as inspite of the variation being prejudicial to the interest of assessee, no opportunity has been provided to the assessee by having him served with a show cause notice as well as draft assessment order calling upon him to show cause as to why the proposed variation should not be made. Thus, the impugned assessment order is non est as the assessment is not made in accordance with procedure laid down under section 144B of the Act. However Revenue may take such denovo proceedings as required in accordance with law- Trendsutra Client Services (P.) Ltd. v. ACIT [2021] 132 taxmann.com 104 (Bombay)

S. 148 Service of notice

It is mandatory that the issuance of notice being a serious and responsible duty necessarily needs to be performed taking reasonable care and making diligent efforts to ensure that the notice issued is duly served upon the person intended. A casual exercise of mentioning blatantly incomplete address cannot be said to be an exercise performed with due diligence and care. Before resorting to service by affixtures, all other modes of serviced/necessarily have to be validly exhausted. The record must show that reasonable attempts were made to find the assessee before resorting to the mode of service by affixture, without first demonstrating that

reasonable attempts were made to serve the notice by normal modes straightaway resorting to service by affixture becomes a questionable action. Smt. Santosh v. ITO [2021] 132 taxmann.com 86 (Delhi - Trib.)

S 263 Time limit for passing the revision order by commissioner

Under sub-section (2) of section 263 no order under section 263 of the Act shall be "made" after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore the word used is "made" and not the order "received" by the assessee. Even the word "dispatch" is not mentioned in section 263(2). Therefore, once it is established that the order under section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under section 263 (2) of the Act. Receipt of the order passed under section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under section 263 of the Income Tax Act. CIT v. Mohammed Meeran Shahul Hameed [2021] 131 taxmann.com 94 (SC)

S. 270AA Challenging order rejecting immunity

Under sub-section 6 of section 270AA, no appeal under section 246(A) or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section 1, in a case where an order under sub-section 4 has been made accepting the application. This only means that when an assessee makes an application under sub-section 1 of section 270AA and such an application has been accepted under sub-section 4 of section 270AA, the assessee cannot file an appeal under section 246(A) or an application for revision under section 264 against the order of assessment or reassessment passed under sub-section 3 of section 143 or section 147. This does not provide for any bar or prohibition against the assessee challenging an order passed by the Assessing Officer, rejecting its application made under sub- section 1 of section 270AA. Haren Textiles (P.) Ltd. v. PCIT

S 276CC Initiation of Prosecution for not filing return of income in spite of having substantial salary income

The Assessee had received substantial income in the form of salary amounting to Rs. 68,71,731/- and had also indulged in high end transactions with respect to purchase and sale of mutual funds and with respect to credit card transactions. He has not filed return of income. Owing to non-filing of the Income-tax Returns, suspicions had arisen over the source of funds for such transactions. In the given facts the prosecution offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act within the time limit specified therein - Raman Krishna Kumar v. DCIT [2021] 131 taxmann.com 341 (Madras)