DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

1. Revised Return of Income – Not permissible to convert original Return into loss in absence of any error or omission in the Original Return – Section 139(5) of the Act.

Assessee was a 100% export-oriented unit and was engaged in the business of running a call centre and IT Enabled and Remote Processing Services. The assessee was eligible to exemption u/s. 10B in relation to the said business.

In the Original Return of Income filed, the assessee declared loss and since the income claimed was exempt u/s. 10B the resultant loss was not carried forward to subsequent years. Subsequently, the assessee exercised option available under sub section (8) of section 10B so as to not to be governed by section 10B of the Act for the year. This option was exercised beyond the due date of furnishing the Return of Income u/s. 139(1) of the Act. The assessee also filed a Revised Return of Income wherein the assessee claimed carry forward of the unabsorbed losses by not claiming exemption u/s.10B. The claim of the assessee made vide the Revised Return of Income was rejected. The Assessing Officer observed that the Return of Income can be revised u/s. 139(5) of the Act only to remove the omission and mistake and/or correct the arithmetical error. It cannot be filed for altogether a new claim. The Income-tax Appellate Tribunal allowed the claim of the assessee. The appeal filed by the revenue to the Karnataka High Court was dismissed by the High Court allowing relief to the assessee.

On further appeal to the Supreme Court, the Hon. Supreme Court held that the assessee filed its original return under section 139(1) and not under section 139(3), i.e., return of loss. Thus, AO was right in submitting that the revised return filed under section 139(5) can only substitute its original return under Section 139(1) and cannot transform it into a return under Section 139(3). The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claim the carried forward or setoff of any loss. Filing a revised return under Section 139(5) and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible.

PCIT vs. Wipro Ltd. [2022] 140 taxmann.com 223 (SC)

2. Claim for Bad debts in the case of NBFC – Cannot be rejected on ground of Change in Method of accounting from mercantile to cash

Assessee was an NBFC and offered lease rentals on accrual basis. The lease rental turned irrecoverable and were written off as bad debts. In the meantime, the assessee had changed the method of accounting from mercantile to cash. The claim of the assessee for bad debts was disallowed on the ground that the change in method of accounting is a violation of accounting principles. This was confirmed by all the lower authorities including the Income-tax Appellate Tribunal.

On appeal to the High Court, the High Court held that a change of the method of accounting by the assessee from mercantile to cash may be a breach of the accounting principles. However, that is not a requirement of Section 36(1)(vii) of the Income Tax Act for allowing a debt as a bad debt. In fact, the Notes on accounts of the assessee had a special mention and it emerged from the same that a prudent practice has been adopted by a limited company of informing its shareholders about the remote possibility of recovery of the said amounts and the decision to reverse and that the same would be accounted for as and when received. Once, a business decision has been taken to write off a debt as a bad debt in its books which decision as discussed above, is bona fide, that in our view, should be sufficient to allow the claim of the assessee. The method of accounting has no relevance to the issue. The Tribunal has misdirected itself in giving precedence to accounting principles over clear statutory provisions.

L. K. P. Merchant Financing Ltd. vs. Dy. CIT [2022] 140 taxmann.com 548 (Bombay)

3. Compensation paid for cancellation of Joint Development Agreement eligible for Deduction u/s. 37(1) of the Act.

The assessee company was engaged in the business of real estate construction. The assessee entered into a joint development agreement with one M, an owner of land. Later on the assessee found a better business opportunity to develop a bigger plot of land in a nearby area which was owned by another company. Both the plots were in the same vicinity. The assessee entered into a development agreement with the company. Since both the plots were in the same vicinity, the assessee approached the Mr. M for cancellation of the agreement entered into with him. The cancellation of the Joint Development Agreement was agreed upon with a condition that the assessee would pay compensation to Mr. M for the same. The compensation paid was claimed as an allowable expense by the assessee.

The compensation was debited as expenses across three years namely A.Y. 2007-08, 2008-09 and 2009-10 since the assessee was following percentage of completion method for offering the income. Assessee's claim was allowed for A.Y. 2007-08 but the same was not allowed for A.Y. 2008-09 and 2009-10. Both the CIT(A) and Tribunal confirmed the order of the assessing officer.

On appeal to the High Court, it was held undisputedly there was a nexus between the compensation paid to Mr. M and the project. Since the nexus could not be doubted, the High Court held that the claim of the assessee was allowable. The High Court also observed that once it is established that there is nexus between the expenditure and the purpose of business, the Revenue cannot cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise its profit. The tax authorities must not look at the matter from their viewpoint but that of a prudent businessman.

Nitesh Estates Pvt. Ltd. vs. Dy. CIT [2022] 141 taxmann.com 121 (Karnataka)

4. Registration u/s. 12AB – No conditions with respect to the conduct of the trust activities can be imposed while granting registration

On application for registration u/s. 12AB by the assessee trust, the CIT granted conditional registration with several conditions. The assessee challenged the order before the Income-tax Appellate Tribunal. On examining the conditions, the Tribunal held that the conditions imposed are with respect to the conduct of the trust and the circumstances in which the registration granted to the appellant-trust can be cancelled. These are the matters which are regulated by the specific provisions of law, and the observations of the learned Commissioner, no matter how well intended, cannot have the independent force of law. If the conditions set out in the registration order have the sanction of the law, irrespective of these conditions being attached to the registration of the trust or not, the law has to take its course, but when the scheme of the law does not visualize these conditions being part of the scheme of the registration being granted to the applicant trust, the CIT cannot supplement the law by laying down these conditions either.

Bai Hirabai Jamshetji Tata Navsari Charitable Institution vs. CIT (Exem) [2022] 141 taxmann.com 120 (Mum.) ; Bai Navajbai Tata Zorastrian Girls School vs. CIT (Exem) [2022] 141 taxmann.com 62 (Mum.)

5. Disallowance u/s. 14A read with Rule 8D – Not applicable when Income assessed under MAT

In an appeal filed by the department, the Tribunal held that for the purpose of MAT, the book profit has to be computed strictly in accordance with the Explanation to section 115JB. Clause (f) of the Explanation provides for adjustment of expenditure relatable to exempt income if such expenditure has been debited to statement of profit and loss account. Rule 8D which provides for a notional amount of disallowance on an estimated basis. The disallowance made in accordance with Rule 8D is not the actual amount debited to the profit and loss account and therefore the same cannot be subject matter of adjustment while computing the book profit as per Explanation to section 115JB.

Asst. CIT vs. Geometric Software Solutions Co. Ltd. [2022] 141 taxmann.com 647 (Mum).

6. Option of concessional rate of tax available to companies u/s. 115BAA – Last date of Filing Form 10-IC – Assessment Year 2020-21 – Effect of TOLA 2020

The assessee, a private limited company had opted for concessional tax regime u/s. 115BAA for A.Y. 2020-21. The assessee filed its Return of Income on 31-3-2021 and in the Return it was indicated that the assessee has opted for the option u/s. 115BAA. The assessee also filed Form 10-IC, the form prescribed for exercising the option, as required u/s. 115BAA (5) on the same day i.e. 31-3-2021. While processing the Return of Income u/s. 143(1), the concessional rate of 22% was not allowed to the assessee and the tax was levied @ 30% under the normal provisions. The CIT (A) confirmed the order on the ground that the Form 10-IC and the Return both were delayed and were beyond the extended due date of 15th February, 2021. The option under section 115BAA (5), by way of

filing of form 10-IC, was not exercised within the time prescribed under section 139(1) which is a sine qua non for availing the concessional tax regime under section 115BAA.

On appeal to Tribunal, the Tribunal held that in terms of the requirement of section 3(1)(b) of TOLA, the time limit for filing of form 10-IC, for the assessment year 2020-21, stands extended to 31st March 2021, and, to this extent, the requirement of filing form 10-IC within the time permitted for filing an income tax return under section 139(1), stands superseded by the TOLA provisions. Section 3(1)(c) of TOLA, provides that where any time limit has been specified in, or prescribed or notified under, the specified Act, which falls during the period from the 20-3-2020 to 31-12-2020 or such other date after 31-12-2020 as the Central Government may, by notification, specify in this behalf, for the completion or compliance of various actions under the Income-tax Act stand extended to the 31st day of March, 2021. Further clause (i) of the 3rd proviso to section 3(1) of TOLA carves out exception only in relation to Return of Income u/s. 139. As a corollary thereto, the time limits for filing of income tax returns and the time limits for the filing of any other application under the Income Tax Act, stand segregated. The Tribunal held that the scheme of section 115BAA has been diluted under TOLA where different treatment was accorded to filing of Return u/s. 139 and filing of various other statutory forms etc. There is no dispute that the original date of filing of income tax return fell within this period, and in terms of the provisions of Rule 21AE, the option was to be exercised in the prescribed manner, i.e. by filing Form 10-IC. The requirement of Section 115BA(5) admittedly was that it is within this time limit that the option must be exercised. However, this extension of the time limit, in view of the relaxation provisions of Section 3(1)(b) of the TOLA, stood extended to 31st March 2021. The filing of the income tax return and the exercise of an option for the concessional regime of taxation under section 115BAA are two distinct obligations. When the overriding provisions of TOLA provide separate relaxations for the purpose of the legal obligations with respect to the filing of return vis-à-vis filing of other documents, to that extent, specific relaxation provisions under the TOLA must make way for rather general provisions with respect to various statutory obligations. If a relaxation provision, as the TOLA is, visualizes separate parameters of relaxation for the income tax returns vis-à-vis other documents, it cannot be open to the revenue to negate the same on the ground that the scheme of the Income Tax Act 1961 treats the filing obligations in respect of the same at par. Relaxation provisions of TOLA must be interpreted in a liberal and non-pedantic manner, and so as to give full effect to the relaxations permitted by the legislature. Accordingly, the Form 10-IC filed by the assessee was held to be within the time.

Suminter India Organics (P.) Ltd. vs. Dy. CIT [2022] 140 taxmann.com 591 (Mum.)

7. Revision of Order prejudicial to revenue – Non invocation of sec. 56(2)(vii)(b) – Debatable issue – Revision not justified

On appeal by the assessee against the revision order passed u/s. 263 of the Act, the Tribunal held that it is highly debatable issue as to whether section 56(2)(vii)(b) of the Act is to be invoked to make addition for excess of Stamp Duty value over consideration as per the Sale Deed merely because there is some difference between the two values. Further, it is also highly debatable whether tolerance limit of 10% of such excess is to be allowed retrospectively or prospectively. Considering the debatable nature of the issue involved, the CIT is not justified in invoking the powers u/s. 263 to propose revision for the order passed in regular assessment.

Shanmuga Sundaram Govindraj vs. ACIT [2022] 141 taxmann.com 119 (Chennai Trib.)