Last 5 attempts Assessment Procedure Adjustments

- May23:

M/s Risky Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the PY 2022-23, it made payment to various parties & deducted tax of 1.60 crores. However, the company failed to deposit the said amount. The company is facing financial hardship since a large money has been stuck-up with its debtors and also in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has suo-moto deposited the TDS amount along-with interest u/s 201(1A) of the Act, before receiving any notice from the income-tax department in this regard. However, Tax officer initiated prosecution proceedings under Section 276B of the Act against the company and its directors.

Here, Section 276B Prosecution Proceedings are attracted, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act.

Section 278AA provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

Company has reasonable and sufficient cause since it was facing financial hardship.The initiation of prosecution proceedings under section 276B against the company and the directors is, therefore, not correct.

XYZ Limited purchased software with M/s. Delta Inc, based in Sweden. It filed an application u/s 195(2) before the AO to make payment for purchase of software without deducting TDS. The assessee, XYZ Limited, contended that company had no PE in India and no tax was to be deducted in India on same. The AO rejected application as it was constituted royalty u/s 9(1)(vi) and was taxable. Hence TDS to be deducted.

On Appeal, the CIT (Appeals) passed an order in favor of the assessee. On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of software were in nature of royalty and TDS to be deducted,

The assessee company filed a miscellaneous application for rectification under Section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court. Tribunal allowed said application in exercise of his powers under section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favor the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. *Is Tribunal justified in recalling its original order?*

Here, Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Order of recalling previous order is not mistake apparent from record.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law. Note – In Reliance Telecom Ltd./Reliance

Communications Ltd. (2022) 440 ITR 1 (SC) wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

MPV Ltd, branch office of US Company, MPV Inc, was in contract research activities and cultivation of parent seeds in India. It had been claiming exemption by treating its entire income as agricultural income. On Scrutiny assessment for the period from year 2010 to 2015, the AO treated income as "Business Income" and attributed deemed income from research activity holding the assessee company to be a (PE) of MPV Inc. However, the assessee company disputed the matter for resolution under Mutual Agreement Procedure (MAP) under the DTAA agreement between India and USA. The MAP was culminated in the year 2020. The assessment was finalized and taxes alongwith interest were paid. However, the assessee disputed the amount of interest u/s 220(2) for the period from 2015 to 2020. Thereafter the assessee company filed an application before Jurisdictional Commissioner of Income-tax under section 220(2A) for waiver of interest levied u/s 220(2). Commissioner dismissed application of the assessee.
The assessee company is a part of MPV Inc, a global conglomerate which had in 2020 94,000 crores in net sales and 2,000 crores as operating profit. The amount paid by it towards interest u/s 220(2) of the Act was 2.50 crores.
Now, whether pendency of dispute resolution under MAP is a valid ground for waiver of interest under section 220(2A)?
Here Section 220(2), Interest for delay in paying sum specified in notice of demand within the period.
Section 220(2A), reduction or waiver of interest payable under section 220(2) if Commissioner satisfied that it is due to reasonable cause.
For this case, merely raising the dispute before any authority cannot be a ground for waiver of interest under section 220(2A). Also, assessee financials presents strong background due to which it seems no "genuine hardship". Therefore, The Commissioner of Income-tax is, therefore, justified in rejecting the claim of assessee.

- Nov22:

On scrutiny assessment of Refresh Me Ltd., the AO increased the income and thus, passed an order of demand. Assessee filed an appeal to CIT(A), who confirmed the order of A.O. Assessee further appealed to ITAT and requested ITAT for the stay of collection of tax, which the ITAT provided initially for 180 days which was further extended till 365 days. The ITAT did not dispose off the appeal before the time extended for collection of tax. *Now, whether the revenue serving an order of demand citing the reason that the order of stay automatically gets vacated post the expiry of 365 days is correct?*
Here Section 254(2A), provides where the appeal filed before ITAT is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.
For this case, As per provisions of section stay shall get vacated upon expiry of 365 days even if the default is due to department itself. This will cause undue hardship to the assessee, even where he is not at fault. In this sense, the provision is arbitrary and disproportionate so far as the assessee is concerned. Contention of department is not justified.

On 31.12.2022, a search under section 132 was conducted in the business and residential premises of Mr. Jethalal and some gold bars were seized from the locker. Mr. Jethalal voluntarily disclosed 12.50 crores of income during the course of search. Later on, he filed an application for sale of the gold bars worth 5 kgs for adjustment "towards the automatic tax liability", even before the completion of the assessment by the

AO. However, AO rejected the application and observed that such action can be taken only after. the assessment is completed and a demand has been quantified. *AO is justified?*

Here Section 132B(1), An assessee is entitled to make an application to the AO for adjustment of seized assets towards existing tax liability. Liability means amount determined on completion of the assessment.

Now for this case, application by the assessee is not for adjustment of any existing liability, but "towards the automatic tax liability". Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

On 31.3.2022, P Ltd. (the assessee) had an o/s interest liability of 2 crores towards loan payable to financial institutions. It issued debentures to the financial institutions in lieu of the outstanding interest on 1.5.2022 and deducted the same from the taxable income as payment thereof. The Assessing Officer, however, rejected the deduction claimed by the assessee, by invoking Explanation 3C of section 43B of the Income-tax Act. *Discuss the validity of the Assessing Officer's claim?*

For this case, Interest payment by way of debentures is not considered as deduction. (Covered in PGBP also). Interest to bank can be claimed as deduction only when the same if actually paid.

- May22:

Mr. X filed his ROI for A.Y. 2023-24 with total income of 10 lakhs. On Scrutiny assessment and an addition of 4 lakhs was made by the AO on account of disallowances of certain expenses. During the course of the assessment proceedings, Mr. X found that he erroneously failed to claim the set-off of brought forward losses under section 72 amounting to 3 lakhs. By the time the error was discovered by Mr. X, the time-limit for filling revised return had also expired. Mr. X approached the AO to allow the set-off of the brought forward losses. *Whether the Assessing Officer is bound to accept the request of Mr. X?*

Here, SC in case of GOETZE INDIA LTD. held that a claim can be made only through a revised return and not through a letter. Therefore AO cannot entertain such claim made by assessee.

On 14.10.2022, a search under section 132 was conducted in the premises of Mr. Sahil. On verification a sum of 20 crores was found in the bank account of the assessee. The AO added such sum as unexplained cash credit under section 68. On appeal, the assessee declared that the sum was received from Mr. Shekhar, one of his close friends. Mr. Shekhar agreed to have transferred such sum to the account of the assessee. However, the AO is of the view that since Mr. Shekhar is unable to explain the source of this sum, it should be treated as unexplained cash credit in the hands of the assessee.

Whether the claim of the Assessing Officer is justified?

Here Section 68, provides that any sum found credited in books of assessee & where assessee does not offers explanation about the nature & source then such sum shall be chargeable to tax.

As per first proviso to Section 68, provides that any sum credited in accounts consists of loan or borrowing or any such amount then any explanation offered shall not be deemed to be satisfactory unless:

i) The person to whom the amount is credited also offers the explanation about nature & source.

ii) Such Explanation is found to be satisfactory to AO.

For this case, Mr. Sahil has to prove the identity of the creditor of the creditor, Mr. Shekhar, in this case, the capacity of the creditor to advance money and finally, the genuineness of the transaction.

Mere confirmation from Mr. Shekhar will not suffice.

Accordingly, the action of the AO in bringing to tax unexplained cash credit in the hands of Mr. Sahil is correct, since his friend Mr. Shekhar, from whom he had received 20 crores which was found credited to his (Mr. Sahir's) bank account, is unable to explain the source of this sum in his hands.

- Dec21:

Nikhil, an individual, for AY 2022-23 in ROI declared income of 80,000 from STCG on sale of shares and paid tax thereon at 15%. The AO issued intimation under section 143(1) accepting the return of income but however, levied tax@30% on such income. The assessee filed an application under section 154 claiming that he erroneously offered to tax the gains arising on sale of shares as STCG instead of LTCG, STT paid, which are exempt from tax. The AO passed a rectification order allowing relief in part by computing tax @ 15% but refused to grant the refund on the ground that it was not claimed in the return of income furnished and the issue was beyond the ambit of section 154. Thereafter, the assessee furnished a revision petition u/s 264, which was rejected by the Commissioner as 154 is limited and had to be strictly based on the return of income furnished and that intimation under section 143(1) was not an order and not assessable to revisionary jurisdiction. *Is intimation u/s 143(1) can be considered for revision by commissioner u/s 264?*
Here Section 264, Commissioner can revise any order, other than an order to which 263 applies.
Any order: It implies that section does not limits the powers to correct order only by subordinate authorities but can also correct order where errors are committed by assessee.
However, intimation u/s 143 is not an order of AO. Therefore, CCIT/CIT u/s 264 can not revise the intimation.

Assessee company bought back 5,00,000 shares at the rate of 18,000 per share for a total consideration of 900 crores held by its sole shareholder and holding company in Mauritius.
In its ROI, it declared the details of the transaction but denied the liability to pay any tax on the said transaction. Notice under section 143(2) was passed, an assessment order was passed rejecting the assessee's contention that the transaction was not a buyback in terms of section 115QA but a buy-back pursuant to a scheme approved by the High Court, and holding the assessee liable to pay tax at 20% on the distributed income of 900 crores.
The assessee filed a writ petition with High Court against this portion of the assessment order. The Department submitted that since the remedy of appeal was available to the assessee, the writ petition should not be entertained. *Is the assessee company is right in filing a writ petition?*
Here, when an alternate remedy is available, a taxpayer cannot seek the right of writ petition.
As per Section 246A, an assessee may appeal to CIT(A) on any one of the following:
i) Assessee denies his liability.
ii) Any order of assessment u/s 143(3), where assessee denies to income assessed/tax determined etc.
Sec 115QA:Where shares are bought back at a higher price than the price at which those shares were issued, then balance will be treated as distribution of income to shareholder and tax@20% is payable by company.
The word denied the liability is quite comprehensive and includes every case where assessee denies his liability. It also covers denial for section 115QA.Accordingly, an appeal would be maintainable against determination of liability u/s 115QA. The action of assessee is not correct.

- July21:

M/s A Ltd, entered into a scheme of amalgamation with M/s. X Ltd and Y Ltd. (Transferor). The appointed date of the scheme was 01-01-2020. The schemes which also incorporated provisions for filing returns beyond the stipulated time were duly approved and sanctioned by National Company Law Tribunal on 31-05-2022, which was duly filed with the Assessing Officer on 10-06-2022. M/s A Ltd, X Ltd and Y Ltd filed its original return of income for the Asst. Year 2021-22 on 31-08-2021 declaring loss of 100 lakhs, 150 lakhs and 120 lakhs, respectively. M/s A Ltd., thereafter, filed a revised return on 31-12-2022 claiming further loss for Assessment Year 2021-22 based on the revised computation of X Ltd. The Assessing Officer did not entertain the revised return stating that it was time barred, and condonation was not taken from CBDT for filing revised return beyond stipulated time.

Here, scheme of amalgamation was approved by NCLT on 10-6-2022 which contained provisions for filing revised return. Due to such approval X Ltd. & Y Ltd. lost their separate identity and character and ceased to exist upon. The provisions came into force from the appointed date i.e. 1-1-2020. Hence A Ltd. filed its revised return.

Section 170(1), Department was required to receive the revised returns of income for A.Y. 2021-22 and assess the income of A Ltd. with considering scheme of amalgamation due to following reasons:

i) Section 139(5) requires filing of revised return, before 3 months prior to the end of relevant AY (31-12-2021 here) would not apply since revised return were not filed on grounds of omission or wrong statement in original return.

The delay was due to the sanction of scheme as it was approved on 10-6-2022. It was impossible for A Ltd. to file revised return on 31-12-2021.

ii) A Ltd. is not required to file condonation with CBDT since it has filed revised return consequent to the approval by NCLT without any objection by department.

M/s A & Co.'s return for the Assessment Year 2022-23 was selected for scrutiny. Disallowances to the extent of 50 lakhs and 75 lakhs was made since the assessee could not prove that bad debts claimed were supported by requisite evidences and repairs and maintenance which were booked on an estimate. It was further observed that another partnership firm M/s B & Co was a partner of M/s A & Co. The Assessing Officer proposed to change the status as AOP and complete the assessment.

Discuss whether the proposal of the Assessing Officer to change the status as AOP is correct in law?

Here Section 36(1)(vii), permits deduction of bad debts written off in books of accounts. The act does not requires supporting evidence for such bad debts claim. AO is incorrect.

For repairs, if it is current repairs then it is allowable as per section 30 or 31 and such expenses can be booked on the basis of reliable estimate subject to conditions of ICDS X. Correctness of AO's depends on nature of repairs & conditions of ICDS X.

For firms being partners of a partnership firm, it is not possible as partnership firm is a relation between persons who have agreed to share profits of the business. Firm is not a separate legal person. Therefore, AO is correct in making it as AOP and can complete the assessment.

ALL THE BEST!

Regards,
CA. Dhruv Bansal