DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

1. Interest earned by clubs from Fixed Deposits with banks – Concept of Mutuality not applicable to such Interest

The Hon'ble Supreme Court was concerned with the interest earned by club from Fixed Deposit placed with Banks where the banks were corporate members of the club. The Interest earned on such Fixed Deposit was considered as not taxable by the assessee clubs on account of concept of mutuality.

The Hon'ble Supreme Court held that principle of mutuality would not apply to interest income earned on fixed deposits made by the appellant Clubs in the banks irrespective whether the banks are corporate members of the club or not. The banks are having obligation to return the funds with interest and accordingly the relationship of the parties is not on the basis of a privity of mutuality. The essential condition of mutuality i.e. identity between the contributors and participators would end. The relationship would then be like any other commercial relationship between a customer and a bank. The interest generated on the fixed deposits or investment made is a commercial activity, permitting the bank to utilise the fixed deposit amount for its banking business by way of lending the amount for a higher rate of interest while paying a lower rate of interest on the fixed deposit made by the club. Thus, identicality between contributors and participators, which is sine qua non for application of principle of mutuality is ruptured.

Secundrabad Club etc. v. CIT [2023] 153 taxmann.com 441 (SC)

2. Mode of accepting deposits – Section 269SS – Penalty u/s. 271D not to be levied where depositors belonged to rural areas

The assessee was a Non-banking Finance Company which had accepted cash deposit in violation of provisions of section 269SS of the Act. The assessing Officer imposed penalty u/s. 271D of the Act. The penalty was deleted by the High Court taking cognisance of the fact that depositors belonged to rural areas where adequate banking facilities were not available.

On revenue's appeal to the Supreme Court, it was noted that in case similar to assessee, Supreme Court dismissed appeal on ground that there was no reason to interfere with impugned judgment. Following the same, it was held that the appeal of the revenue was to be dismissed.

CIT v. Sahara India Financial Corp. Ltd. [2023] 153 taxmann.com 225 (SC)

3. Mark to Market loss on open equity stock future contracts - Ascertained liability and allowable as deduction

The Bombay High Court in the case of *Pr. CIT v. DSP Merill Lynch Capital Ltd. [2022] 142 taxmann.com 579* held that so long as mark-to-market loss on open equity stock future contracts was not a case of speculative transaction and loss incurred was of forward contract in regular course of business, loss incurred as forward contract was to be allowed as business loss and that the same cannot be considered as a contingent loss.

On SLP filed by the revenue, the Hon'ble Supreme Court dismissed the SLP observing that there was no infirmity in the High Court's judgment and therefore no inference was called for.

Pr. CIT v. DSP Merill Lynch Capital Ltd. [2023] 153 taxmann.com 178 (SC)

4. Transactions in respect of Penny Stock - Cash Credits – SLP against judgment of Allahabad High Court dismissed by Supreme Court

In a case where the addition was made in respect of the transactions in alleged penny stock by treating the same as unexplained cash credits, the Allahabad High Court dismissed the Department's appeal observing that no question of law arose from the order of the Tribunal affirming the order of the Commissioner (Appeals) allowing relief to the assessee, and the findings of the Commissioner (Appeals) to the effect that there was no adverse comment from the stock exchange or the company whose shares were involved in these transactions, that the Assessing Officer quoted the facts pertaining to completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions, that the name of the assessee was neither quoted by any of such persons nor was any material relating to the assessee found at any place where investigation was done by the Investigation Wing,

On a petition for special leave to appeal to the Supreme Court, the Hon'ble Supreme Court dismissed the SLP and observed that no case for interference is made out in exercise of jurisdiction under Article 136 of the Constitution of India.

Pr. CIT v. Smt. Renu Aggarwal [2023] 456 ITR 249 (SC)

5. Reassessment proceedings continued disregarding assessee's explanation and objections without proper explanation – Reopening of assessment lacks reasonable grounds – Liable to be quashed

Assessee had made investment in purchase of shares and had earned profit from sale of shares. The assessment was sought to be reopened under section 148 on ground that amount of Rs. 9.90 lakhs being amount of income earned on sale of shares had not been offered for taxation. The assessee responded to the notice and stated that amount of Rs. 9.90 lakhs was not credited to assessee's bank account, but rather it represented a loss incurred in commodity trading and loss had been properly accounted for in accounts. The assessee therefore objected to reassessment in his case. Despite of the explanation, the objections raised were rejected and assessment order was subsequently passed.

On writ petition filed by the assessee, the High Court noted that the amount had been shown as amount of loss sustained by assessee which was debited in his account and not credited as mentioned in notice. Said amount was also included in return filed by assessee. Therefore, the notice issued under section 148 seeking re-opening of assessment suffered from fundamental factual errors. Objections having been decided without any speaking order and not dealing with undisputed factual aspects lead to conclusion that re-opening of assessment was without there being any reason to believe that income had escaped assessment. Accordingly, the High Court quashed the reassessment proceedings. The High Court further held that the assessee has been able to make out exceptional case to interfere in exercise of writ jurisdiction, the notice issued u/s. 148 was to be quashed despite of the fact that the assessment order in this case was already completed.

Arvind Sahdeo Gupta v. ITO [2023] 153 taxmann.com 244 (Bombay)

6. Time limit for completion of assessment – Section 153 read with section 144C

On writ petitions filed by the assessee on the grounds of the assessments being time barred, the Hon'ble High Court held that exclusion of section 153/153B is specific to, and kicks in only at stage of passing of final assessment order after directions are received from DRP, and not at any other stage of proceedings under section 144C. Hence, entire proceedings would have to be concluded within time limits prescribed. Exclusion of applicability of section 153, insofar as non-obstante clause in Sub-section (13) of section 144C is concerned, is for limited purpose to ensure that de hors larger time available, an order based on directions of DRP has to be passed within 30 days from end of receipt of such directions. Similar non-obstante clause is also used in section 144C(4) with same limited purpose to imply, even though there might be a larger time limit under section 153, once matter is remanded to Assessing Officer by Tribunal under section 254, process to pass final order under section 144C has to be taken immediately. Time limit prescribed under section 153 would prevail over and above assessment time limit prescribed under section 144C because Assessing Officer may follow procedure prescribed under section 144C, if he deems it necessary but then entire procedure has to be commenced and concluded within twelve months period provided under section 153 (3). Object is to conclude proceedings as expeditiously as possible and there is a limit prescribed under statute for Assessing Officer and therefore, it is his duty to pass an order in time.

Shelf Drilling Ron Tappmeyer Ltd. v. Asst. CIT [2023] 153 taxmann.com 162 (Bombay).

7. Time Limits for Reassessment – Section 149 read with section 148 and 148A

Notices under section 148A(b) of the Act was issued the assessee for assessment years 2013-14 and 2014-15 on 2-6-2022. However the notice was emailed to the assessee on 8-6-2022. The assessee filed writ petition challenging the notices on the ground that the said notices lost efficacy after 3-6-2022 (30 days from judgment of the Supreme Court in the case of Ashish Agarwal).

The High Court held that the impugned notices under section 148A(b) having been mailed after 03-06-2022, do not just abrogate mandate of CBDT Instruction No. 1/2022, dated 11-5-2022 but also violate provisions of section 282A insofar as name and designation of concerned officer issuing same find no mention in impugned notices. Accordingly the impugned notices under section 148A(b) and order under section 148A(d) were set aside.

Jindal Exports and Imports (P) Ltd. v. Dy. CIT [2023] 152 taxmann.com 609 (Del.)

8. Not claiming of credit of Advance Tax Paid by assessee through inadvertence while filing Return of Income –credit cannot be denied, even though not claimed in Return.

While filing the Return of Income for the assessment year 2013-14, the assessee inadvertently missed out to claim credit for the advance tax of Rs. 1.10 Crores paid. The advance tax was reflected in Form 26AS of the assessee and hence there was no dispute about the same. The due date of filing revised return had expired and hence the assessee approached the assessing officer with a

request to rectify the order u/s. 154 of the Act and allow the credit for the advance tax paid. The assessing officer rejected the claim. The order of the assessing officer was confirmed by the NFAC.

On appeal to the Tribunal, it was held that inadvertence on part of assessee to claim credit for advance tax while filing its return of income or filing revised return of income in this regard did not absolve Assessing Officer from its statutory duty as per section 219 to grant credit in regular assessment, particularly when said amount was duly reflected in Form 26AS which formed part of record of revenue. Accordingly, Assessing Officer erred in not rectifying this apparent mistake when same was pointed out by assessee vide its application under section 154. The Tribunal directed the assessing officer to allow the credit for the advance tax paid.

Damco India Pvt. Ltd. v. CIT (Appeals) [2023] 153 taxmann.com 636 (Mum. Trib.)