

Important judgements and Updates

Update No 36/ 2021

Forzza Projects (P.) Ltd. Kerala High Court In favour of Assessee

CRL.MC.NOS. 5669 OF 2020 (G) AND 5671 OF 2020 (H)

Issues discussed and addressed:

Issue No 1 Section 276C Mere failure to pay Self Assessment Tax by assessee would not constitute offence under section 276C(2).

Facts of the case with respect to issue No 1:

The petitioner seeks to quash the complaints and its further proceedings on the reason that there is only a failure to make payment of the tax in time as per the self assessment return and it will not fall under any of the clauses (i) to (iv) in the *Explanation* attached to section 276C of the Income-tax Act and hence, the criminal liability under that section cannot be fastened. But it was countered by the Income-tax Department stating that it is incumbent on the tax payer to remit the tax based on the self assessment and the non-payment would come under the expression "evade the payment of tax" as incorporated in sub-section (2) of section 276 C of the Act and cannot seek protection under the *Explanation*, which is not applicable to that sub-section.

Held by the Authorities with respect to Issue No 1:

There was only a failure on part of assessee to pay tax in time which was later on paid after availing instalment facility with interest. Mere failure to pay income tax based on self assessment would not constitute offence under section 276C(2) and hence, the proceedings were to be set aside.

Renew Power Private Limited W.P.(C) 5235/2021 Delhi High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Faceless Assessment faceless assessment order passed before Assessee could respond to SCN is quashed by Delhi High Court allowing the respondent/revenue one more opportunity to pass a fresh assessment order, albeit, as per law.

Facts of the case with respect to issue No 1:

Revenue issued SCN-cum-draft assessment order dated April 18, 2021 requiring assessee to respond by 23:59 hours on April 22, 2021 and subsequently passed the assessment order on April 22, 2021 at 14:11 hours; Assessee made attempts to upload its response to the SCN-cum-draft assessment order on April 22, 2021 but was met with failure as the impugned assessment order had already been passed.

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Held by the Authorities with respect to Issue No 1:

High Court rejecting Revenue's contention that assessee has an alternate remedy, relying on Supreme Court ruling in Calcutta Discount and Whirlpool Corpn. holds, "The denial of opportunity to the petitioner to place before the assessing officer, its objections and/or explanations by way of a response has led to breach of principles of natural justice, resulting in grave civil consequences for the petitioner"

The allowing the writ the order passed by the Respondent / Revenue is quashed and one more fresh opportunity is given to respondent / revenue to pass a fresh assessment order.

Ryder Trans International Pvt. Ltd ITA No. 720/Ind/2019 Indore ITAT Against Assessee

Issues discussed and addressed:

Issue No 1 Section 2(22)(e) Loans received by a company from other companies with common substantial shareholder is taxable u/s 2(22)(e).

Facts of the case with respect to issue No 1:

Assessee, engaged in the business of manufacture of conveyor belts and rubber products, was subjected to reassessment proceedings AY 2012-13 for escapement of deemed dividend u/s 2(22)(e) amounting to Rs. 2.2 Cr. on receipt of loan from three companies wherein Mr. Punyapal Surana enjoyed substantial interest (shareholding more than 20%) and held 25.35% shares in the assessee.

Held by the Authorities with respect to Issue No 1:

ITAT holds that provisions of Section 2(22)(e) which also provides for taxing the loan as deemed dividend when received from a concern in which a shareholder with voting rights of more than 10% is a member or a partner with a substantial interest. In the instant case, there being a common shareholders amongst all the four companies having substantial interest and voting power of more than 10%, the provisions of Section 2(22)(e) are attracted.

Maharashtra Jeevan Pradhikaran IT APPEAL NO. 2410 (PUN) OF 2017 Pune ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 272A(2)(k) Penalty levied under section 272A(2)(k) was not justified. as there is no loss to the revenue since the assessee has timely deposited TDS was with revenue.

Facts of the case with respect to issue No 1:

The AO was of the opinion that in this case there was delay in delivering the copy of statement is 564 days, 472 days, 380 days, 452 days, 564 days, 472 days, 380 days and 260 days and the tax deductible relating to

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the statement in question is Rs.8,200/-, Rs.12,600/-, Rs.22,100/- Rs.2,81,096/-, Rs.2,63,035/-, Rs.1,96,039/-, Rs.75,298/- and Rs.30,030/- respectively. Therefore, he held that the assessee has committed a default in not delivering the E-TDS statements within the specified time without any reasonable cause and accordingly, levied penalty of Rs.2,55,700/- u/s.272A(2)(k) of the Act.

Held by the Authorities with respect to Issue No 1:

The provisions of Section 272A(2)(k) are subject to provisions of section 273B of the Act and hence, the relevance of reasonable cause has to be established.

Since on filing belated returns/statements, Revenue had not suffered any loss because tax deducted was already deposited on time and there was mere technical or venial breach to provisions contained in Act for submitting return/statements of TDS.

Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. Nav Maharashtra Vidyalaya Vs. Addl. CIT, reported in (2016) 74 Taxmann.com 240 (Pune Tribunal)
- b. The Board of Control for Cricket In India Vs. ACIT (TDS)-2, ITA No.1999/Mum/2017 dated 05.10.2018.
- c. Argus Golden Trades India Ltd. Vs. JCIT reported in (2017) 50 CCH 0071 (JaipurTribunal)
- d. Punjab National Bank v. ACIT (2011) 140 TTJ 0622 (Lko.)
- e. Haryana Distillery Ltd. Vs. JCIT IT Appeal No.1642 & 1643 (Delhi) 2015, September 4, 2018

Important Updates

- a. The Central Board of Direct Taxes (CBDT) has clarified that if different relaxations are available to the taxpayer for a particular compliance, he is entitled to the relaxation which is more beneficial to him. This clarification comes when CBDT extended time limit for filing appeal before CIT(A) till 31-05-2021 whereas the Supreme Court has extended the period of limitation, in respect of all judicial proceedings, till further order.
- b. The Finance Act, 2021 has amended Section 50B(2) to provide that the FMV of capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be calculated in the prescribed manner. Such FMV shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset. Now the board has notified Rule 11UAE for computation of FMV.