VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

February 2023

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CIT(A) cannot decide petitioner's appeal ex-parte merely because of failure to attach grounds of appeal at the time of filing memo of appeal in Form No. 35

Facts

The petitioner is challenging the order passed by the appellate authority u/s 250 primarily on the ground that the submissions made by the petitioner and uploaded in support of his memo of appeal had not been considered at all and the decision was rendered ex-parte. The petitioner had filed his memo of appeal in Form 35, however the grounds of appeal were not attached at the time of filing of Form 35 on account of some technical reasons. It is stated that during the course of the appeal proceedings, by virtue of notice dated 29th August 2022, the petitioner was required to submit its grounds of appeal, which was not responded to by the petitioner. Subsequently, the petitioner was asked to upload the submissions to which the petitioner duly responded. The petitioner contended that the case was concluded without considering the submissions and the impugned order was passed by the appellate authority holding that there was no response to the notices issued to the petitioner, which, it is stated was factually incorrect. Merely because the petitioner has failed to submit the grounds of appeal as an attachment at the time of filing its memo of appeal in Form No. 35, could not be a basis for the appellate authority to pass the order ex-parte especially when the submissions sufficiently reflected the grounds on which the order of assessment was being challenged in the appeal proceedings.

Ruling

HC allowed the petition and set aside the order impugned and remanded the matter to the appellate authority, for a fresh consideration holding that the submissions already uploaded may be considered in their correct perspective and orders be passed not later than three months.

Source: High Court, Bombay in Prime ABGB (P.) Ltd. vs NFAC vide [2023] 147 taxmann.com 357 (Bombay) dated February 08, 2023

When total taxes have already been paid though mistakenly into son's PAN number, total waiver of interest u/s 220(2) on demand raised u/s 143(1) was to be granted after adjusting the partial waiver already received earlier

Facts

The petitioner is an individual assessee who has filed his returns for the AYs 2009-10 and 2011-12, declaring a total taxable income of INR 88.37 lacs and INR 87.10 lacs respectively. The petitioner also filed a return of income for the same AYs for his minor son, separately. The declared income of the petitioner included income of INR 33.46 lacs and INR 35.14 lacs of his minor son Imaad Musvee and the petitioner also claimed credit of prepaid taxes of INR 21.27 lacs and INR 25.41 lacs paid on account of his minor son in his return of income. The petitioner had included the income of his minor son u/s 64 in his return. He had paid the advance tax on the said minor's income in the PAN number of the minor. The Department processed the return creating demand on account of advance tax paid by the petitioner in the PAN number of his minor son stating that credit cannot be given for the amount paid under different PAN numbers and advised the petitioner to file a rectification petition u/s 154in the case of his minor son and obtain refund and once again pay the tax in the PAN number of the petitioner. The petitioner is of the contention that since he had already paid the tax amounts; he sought for total waiver of the interest amount of INR 12.20 lacs and INR 8.15 lacs u/s 220(2) as he has paid the taxes in the year 2011 itself albeit in his minor son's PAN number. According to the petitioner, the Income Tax Department had the tax amounts with them through all these years and therefore, there is no basis for the demand of interest. However, under the impugned orders, the first respondent has granted only partial waiver of interest viz., 20% and has directed the petitioner to pay the balance 80%. Aggrieved by the same, the petitioner has filed these Writ Petitions.

Ruling

HC in its order stated the under mentioned hardships faced by the petitioner due to the erroneous action of the respondents in not giving credit to the Advance Taxes:

- The interest u/s 220(2) has been levied even though the taxes has been paid in 2009 and 2011 itself on the income of the minor son and the same had been included in the return of the petitioner as envisaged in section 64;
- The interest is compensatory in nature and when the tax amounts have been with the Department from 2011 onwards, there is no warrant to levy interest.
- The petitioner's payment of taxes in his own PAN number was even before the refunds were granted to his son, thus resulting in the Department having the benefit of the taxes twice over for a short period;
- The respondent in the impugned order has failed to appreciate that the petitioner has been approaching various authorities on account of the technical glitch in the computer/software applications of the Department for which the petitioner cannot be penalized.

HC held that the petitioner has certainly suffered genuine hardship and for no fault of his, interest cannot be levied u/s 220(2) when the advance taxes were infact paid on time though mistakenly in the petitioner's minor son's PAN number. HC stated that it is also not the case of the respondents that the petitioner did not cooperate in any enquiry relating to the assessment or any proceedings for the recovery of amount due from him and held that the first respondent ought to have granted full waiver of the interest to the petitioner, but, instead, erroneously has granted only 20% waiver by passing non speaking orders. The court taking note of the fact that the petitioner has already got the benefit of interest while the respondents had refunded a sum of INR 3.59 lacs and INR 1.60 lacs u/s 244A. Certainly that amount has to be adjusted from and out of the waiver of interest u/s 220(2A). The petitioner had sought for waiver of INR 12.20 lacs and INR 8.15 lacs u/s 220(2A) which has been partially allowed by granting 20% waiver to the petitioner under the impugned orders which work out to INR 2.44 lacs and INR 1.63 lacs and the balance 80% amount is INR 9.76 lacs and INR 6.52 lacs respectively. This Writ Petition is partly allowed by modifying the impugned order by granting full waiver of interest to the petitioner u/s 220 (2A) and by directing the petitioner to pay a sum of INR 3.59 lacs and INR 1.60 lacs respectively which he has received towards refund of interest u/s 244A from the respondents within a period of four weeks from the date of receipt of a copy of this order.

In the result, these Writ Petitions are partly allowed.

Source: High Court, Madras in Fuaad Musvee vs PCIT vide [2023] 147 taxmann.com 426 (Madras) dated February 09, 2023

When Petitioner had duly furnished all documentary evidences and AO had made proper, sufficient and adequate enquiry with regard to petitioner's claim of exemption u/s 11 during scrutiny proceedings, mere statement that "no documentary evidence is submitted in support of its claim" could not countenance such categorical findings of fact. Revisionary proceedings initiated by CIT(E) were therefore quashed

Facts

The petitioner Dhaneswar Rath Institute of Engineering & Medical Sciences, Cuttack, a charitable trust being granted registration u/s 12AA, claimed exemption u/s 11 which was selected for scrutiny. The AO completed assessment u/s 143(3) on a total income determined at Nil. The CIT (Exemption), Hyderabad considered the assessment order erroneous insofar as prejudicial to the interests of revenue stating that where cost of asset was allowed u/s 11 as application of income in the earlier AYs, depreciation is not entitled to be claimed; the instant petitioner having gross block of fixed assets of INR 96.79 crores as on 01-04-2015 and such cost of asset having been allowed u/s 11. The CIT (Exemption) issued SCN u/s 263 on the basis that depreciation of INR 4.77 crores should not have been allowed as application of trust income for charitable purposes and, thereby, income accumulated worked out to INR 5.66 crores which exceeded 15% of the income derived from property held under the trust. The petitioner questioned the hot-haste decision of the CIT (Exemption) before the ITAT stating that in the instant case, the charitable trust having not claimed the amount as application of income at the time of purchase, there is no restriction of claiming depreciation on those assets which have not been included in the amount of application of receipts in the financial statement. The learned ITAT allowed the appeal of the petitioner charitable trust and quashed not only the Order passed by the CIT (E) u/s 263, but also all consequential proceedings and orders related thereto. Aggrieved, the department-CIT (E) has approached this Court.

Ruling

In the instant case, the notice contemplating initiation of proceeding for revision was issued on 26-03-2021 and the order in revision was passed on 31-03-2021 by rejecting request of the petitioner for grant of 15 days' time. Therefore, the learned ITAT was correct in holding that CIT(E) passed the order without giving any opportunity to the petitioner and "Hence, on the said ground the CIT (E) is not justified in directing the AO to redo the assessment". This question as posed by the Petitioner is answered in the positive, i.e. against the Revenue-Department.

HC also stated that in the present case, the AO has issued notice u/s 142(1) along with questionnaire instructing the petitioner to furnish details and basis of claim of depreciation as application income of the petitioner, which was replied by the petitioner. It is noted by the learned ITAT that records of the preceding AYs were with the AO and the petitioner had been consistently claiming depreciation as application of income without making the claim u/s 11 at the time of acquisition or purchase of assets as application of income. Therefore, there arose no necessity for the AO to go further to analyse and examine the issue as he is duty bound to follow the "rule of consistency" and, hence, it is not a case of "no enquiry". Rather the AO has made proper, sufficient and adequate enquiry with regard to claim with reference to books of account, which is evident from the Assessment Order itself. In result, the Appeal preferred by the Department u/s 260A is dismissed.

Source: High Court, Orissa in CIT vs Dhaneswar Rath Institute of Engineering & Medical Sciences vide [2023] 147 taxmann.com 469 (Orissa) dated February 14, 2023

Where claim of deduction u/s 80P was allowed, reopening of assessment by issue of notice u/s 148 without any new information available with the AO, being a mere change of opinion was not justified

Facts

The Petitioner is a housing society registered under the Maharashtra Cooperative Societies Act. It fled its return for the AY 2013-14 declaring a total income of INR 11.40 lacs after claiming deduction of INR 2.62 crores u/s 80P. The Petitioner had explained the deduction of INR 2.62 crores u/s 80P on the following basis, [INR 2.61 crores u/s 80P(2)(d) and INR 0.50 lacs u/s 80P(2)(c)]. The AO though allowed the deduction u/s 80P made certain disallowances in the order of assessment. Subsequently, after necessary sanction from the PCIT, a notice u/s 148 was issued with the reason that the petitioner had earned interest income of INR 2,62 crores from the investments made in fixed deposits in co-operative Banks. The deduction of the amount was claimed by the petitioner and allowed by the AO u/s 80P. As per section 80P(2)(d), the interest income derived from its investments with any other co-operative societies is eligible for deduction. In the instant case, the interest income has been derived from investments made in Cooperative Banks which does not fall under purview of Cooperative Society.

Further, objections to the reopening were filed by the Petitioner highlighting the fact that there was no failure on the part of the petitioner to disclose fully and truly all material facts before the AO during the assessment proceedings u/s 143(3). It was also stated by the Petitioner that there was no new tangible material with the AO based upon which the assessment could be reopened and that a reappraisal of existing material would amount to review and change of opinion, which was impermissible in view of the various pronouncements on this subject.

Ruling

HC stated that the Petitioner had specifically claimed the deduction u/s 80P which was not only reflected in the return of income but also gone into specifically, as can be seen from the notice issued u/s 142(1) of the Act where by the details of various deductions and exemptions along with documentary evidence had been sought for by the AO, which finally led to the passing of the order of assessment after allowing the claim of deduction under Section 80P. HC further stated that it is settled law that if a query is raised during the assessment proceedings and the petitioner submitted a reply thereto, leading to the passing of the order of assessment, a reopening in the absence of any new tangible material would be nothing but a change of opinion, which would not furnish to the AO a basis for his 'reasons to believe' that income chargeable to tax had escaped assessment. The impugned notice is unsustainable on account of these jurisdictional errors committed by the AO. Consequently, this petition was allowed and the impugned notice u/s 148 as well as the assessment order were held to be unsustainable and were accordingly quashed.

Source: High Court, Bombay in Tahnee Heights CHS Ltd. vs ITO vide [2023] 147 taxmann.com 335 (Bombay) dated February 15, 2023

Reopening of the case on the basis of audit objection related to fact that assessee had not disallowed entire amount of CSR expenditure was set aside on the ground that reopening on part of the AO was essentially on audit party opinion and not on basis of his own conviction

Facts

The petitioner is a limited company which has filed its return of income under normal provisions and the book laws as well. The return of the petitioner was processed and his case was selected for scrutiny under CASS. The detailed scrutiny was undertaken and the assessment order u/s 143(3) was passed accepting the returned total loss of the petitioner for AY 2016-17 without making any addition or disallowance. The respondent issued notice u/s 148 asking the petitioner to file return of income for AY 2016-17. The petitioner, without prejudice, filed the return of income in compliance with the notice and sought for the reasons recorded for reopening and approval obtained u/s 151 which were duly provided to the petitioner. In response to the same, the objections were raised challenging the validity of the notice. The respondent disposed of the objections mentioning that the AO himself had objected to the audit party's communication and hence the reasons recorded are not in accordance with the law. According to the respondent, from computation of income, the Income from Business or Professions as well as ITR has not been added back while computing the taxable income whereas expenditure incurred by the petitioner on the activities related to Corporate Social Responsibility shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession.

Ruling

This Court made it quite clear that the AO himself initiated the reassessment proceedings without his own conviction and only at the instance of the audit party which was termed to be a colorable exercise of jurisdiction and the same was not sustained. The Court, while considering the submissions of both the sides, has held that apart from the information furnished by the audit party, the AO had no other information for reopening u/s 147B. There is no material worth the name emerging that to indicate any independent application of mind could be noticed. On the contrary, there are glaring facts which have been pointed out that the AO had no subjective satisfaction while issuing the notice of reopening. Therefore also, in this background, it is a settled law that any notice of reopening issued by the AO without any independent application of mind would lay the validity. Accordingly, this petition was allowed and the notice along with the order were quashed and set aside.

Source: High Court, Gujarat in Adani Power Rajasthan Ltd. vs ACIT vide [2023] 147 taxmann.com 548 (Gujarat) dated February 20, 2023

Section 50C would not be made applicable to determine capital gains on compulsory acquisition of land by National Highways Authority of India (NHAI) as question of payment of stamp duty for effecting such transfer would not arise

Facts

The petitioner filed its original return of income declaring loss of INR 591.65 crores. Subsequently revised return was filed declaring loss of 581.04 crores. The case was selected for scrutiny the AO completed the assessment u/s 143(3) after making the following additions:

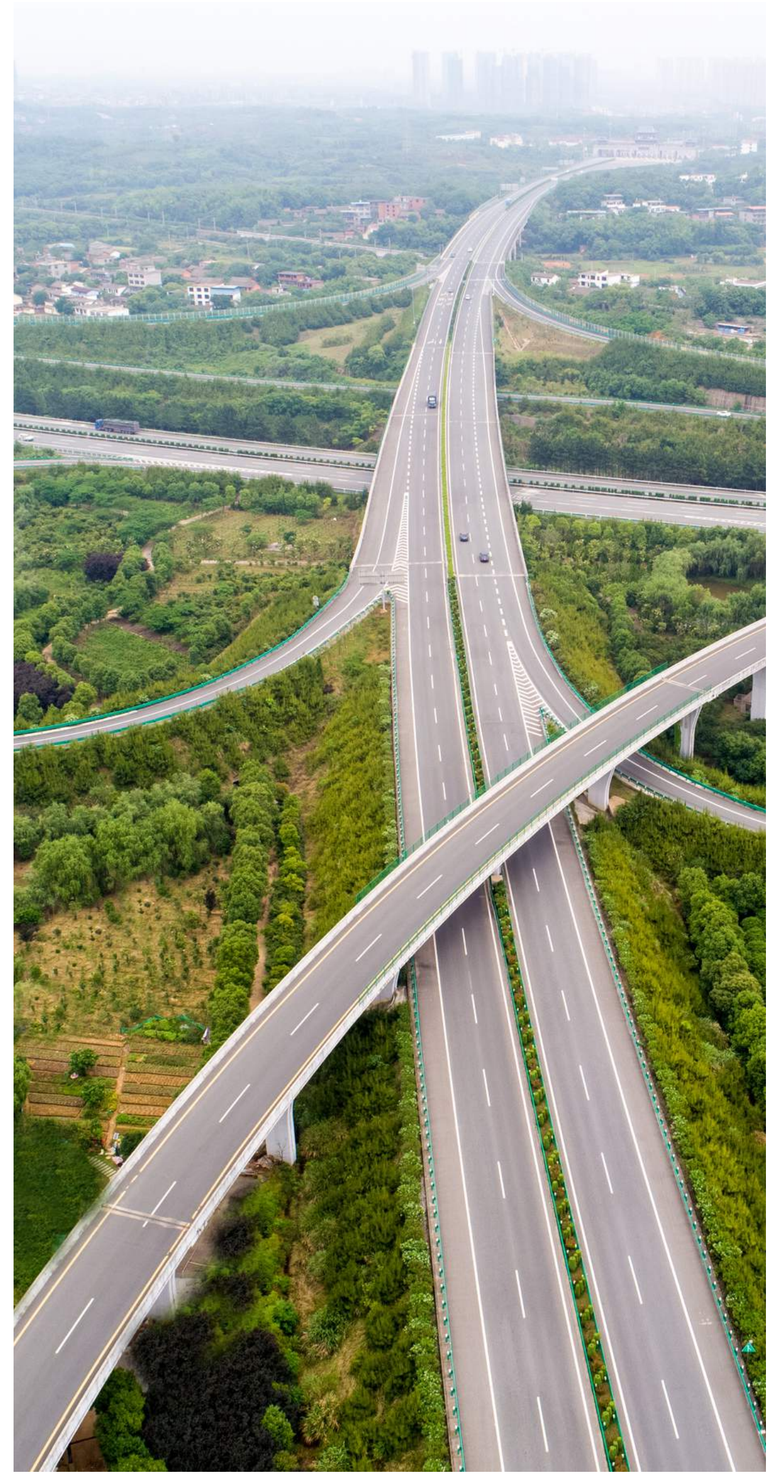
- INR 5.48 crores to the total income being capital gain on transfer of land to the National Highways Authority of India (NHAI). The CIT(A) refused to accept the conclusion arrived at by the assessing officer and allowed the petitioner's appeal and deleted the disallowance on the shortage of coal.
- disallowed the claim towards shortage of coal amounting to INR 7.41 crores and shortage of coal imported amounting to INR 16.36 lacs

The petitioner preferred an appeal before the CIT(A), Durgapur who partly allowed the appeal holding that the AO was not justified in invoking Section 50C on the land which was compulsorily acquired for NHAI and directed to re-compute the capital gains without applying Section 50C. Further the addition made towards the shortage of coal was also deleted. The revenue challenged the said order by filing the appeal before the Tribunal. The appeal was dismissed by the impugned order.

Ruling

- The first aspect we will deal with is whether the AO was justified in invoking the provisions of the Section 50C. Admittedly, the land in question was compulsorily acquired by the NHAI. The petitioner received compensation of INR 4.47 crores from NHAI and valuation of the stamp valuation authority was INR 9.96 crores. The AO adopted the full value of sale consideration u/s 50C and calculated the capital gains in the hands of the petitioner at INR 5.48 crores. Since the transfer of the land was not on account of the agreement between the parties, but it was the case of the compulsory acquisition under the provisions of the 2013 Act, therefore, the transaction cannot be treated to be a transaction between two private parties where there may be room to suspect the correct valuation and the apparent sale consideration which was reflected in the sale documents. As in the instant case, it is an acquisition of land by the Government by way of compulsory acquisition, the appellant department cannot be heard to say that there was suppression of the value and consequently the question of invoking Section 50C does not arise. Thus, the findings rendered by the CIT(A) as affirmed by the Tribunal on this issue does not call for any interference.
- On the second aspect of shortage in coal, HC held that the quantity and value as was shown and from the notes and financial statements for the year ended 31-03-2015, we find that the quantity of 27,426.39 metric tons was subtracted from the total quantity of 10,52,299 metric tons which would show that the actual consumption of coal was 10,24,872.61 metric tons. The total value of the coal as at 31-03-2015 was INR 41,278.13. If these figures are compared with the figures shown in the chart for coal consumption of power plant for the year 2014-15, it clearly matches as the figures 27,426.39 is reflected. Thus, the petitioner did not properly explain the said aspect before the CIT(A) nevertheless such explanation has been given before us which we find to be factually acceptable.

Source: High Court, Calcutta in PCIT vs Durgapur Projects Ltd. vide [2023] 148 taxmann.com 50 (Calcutta) dated February 24, 2023



Benefit cannot be denied where exemption u/s 54 towards investment made in purchase of a residential house has been claimed from the date of possession of new flat and not from the date of supplementary agreement which is beyond one year preceding the year of sale

Facts

The petitioner is a non-resident Indian and has filed his return of income declaring the total income of INR 8.71 lacs for the AY 2019-20. During the year, the petitioner has sold his bungalow and earned long term capital gain of INR 2.11 crores, out of which he claimed deduction of INR 1.71 crores u/s 54 for investment in a residential flat. The petitioner had sold the above bungalow on 23-10-18. The flat in the investment of which the petitioner claimed deduction u/s 54 was purchased on 21-12-16. The AO held that as the property purchased is beyond one year preceding the year of sale, the petitioner is not eligible for deduction u/s 54. The petitioner submitted that he entered into a supplementary agreement with the builder for purchase of the flat on 06-07-18 and the date of possession of the flat by the petitioner was 24-12-18. Therefore, the petitioner claimed that he is eligible for deduction u/s 54. The AO however, observed that the supplementary deed was only a deed of rectification and cannot be taken cognizance of that the flat number, building name and the consideration value of the flat remained the same. Accordingly, the AO held that the petitioner was not eligible for deduction u/s 54 as the petitioner had not purchased the new asset within the period of one year before the transfer took place. The petitioner stated that the new flat No. 302 in the project, was acquired on 24-12-18 when the developer has given the possession of the flat to the petitioner as per the possession letter. Thus, the new flat acquired on 24-12-18 is within the time limit of two years from the date of sale of the bungalow along with the plot which was 25-10-18 and therefore, the petitioner satisfies the condition of section 54 and the deduction claimed u/s 54 is valid.

Ruling

ITAT stated that on perusal of the agreement with the petitioner and the builder, it is noted that the petitioner had entered into an agreement for acquiring flat No. 302 in the building which was under consideration. ITAT held that the contents of the agreement further states that the developer shall construct the building in which the petitioner has acquired a right to get the flat No. 302 from the developer. Through this agreement, the petitioner received the right to acquire flat No. 302 after the construction of the building was completed. The agreement dated 21-12-16 is an agreement for purchasing the flat by the petitioner and not the sale deed. If the flat was ready, there would have been a sale deed entered into between the builder and the petitioner and not the agreement for sale. The possession letter was issued by the developer on 24-12-18 which clearly shows that the petitioner received the possession of the new flat only on 24-12-18. Therefore, through the agreement dated 21-12-16 the petitioner had only acquired a right to get flat No. 302 from the developer after the building of construction was completed. These facts have not been refuted by the department. In the judgment of the Hon'ble Bombay High court in the case of CIT Vs. Smt. Beena K. Jain (1994) 75 Taxman 145 Bombay) while interpreting the provision of section 54 on an appeal by the Revenue against the Tribunal's order it was held that the Tribunal was right in allowing the exemption under the said provision considering the date of possession of the new residential premises instead of date of sale of agreement and the date of registration.

The Tribunal further held Court that the relevant date to be considered was when the petitioner had paid the full consideration amount of the flat becoming ready for occupation and obtained possession of the flat which was also affirmed by the Hon'ble Bombay High. The principle therefore, emerges from the aforesaid decision is that the new property shall be deemed to have been acquired only when it is ready, full consideration has been paid and the possession is received by the petitioner. Admittedly, in this case what the department is harping upon is merely the agreement dated 21-12-16 when the building itself was not constructed and the petitioner has only acquired his right to get a flat in the said building. When actually therefore, can it be said that the new property was purchased? It is only when the petitioner received the possession through letter of possession on 24-12-18. This is when all the three ingredients as enumerated in the decision of Hon'ble Jurisdictional High Court for claiming deduction u/s 54 had been complied with by the petitioner. In the result, appeal of the assessee is allowed.

Source: ITAT Pune in Sanjay Vasant Jumde vs ITO vide [2023] 148 taxmann.com 34 (Pune - Trib.) dated February 02, 2023

The petitioner paid self-assessment tax along with interest before the original due date of return but could not file the return; whereas filed the return of income in response to notice issued u/s 148, impugned interest levied u/s 234A, 234B and 234C till date of completion of assessment was deleted

Facts

The petitioner is an individual and derives income under the head salary and interest income. The petitioner did not file his return of income for the AY 2011-12 u/s 139. The petitioner has filed the return of income as on 13-04-18 in response to the notice u/s 148 declaring an income of INR 6.20 lacs which was accepted by the AO u/s 147. Besides, the AO has levied interest under section 234A, 234B and 234C till the date of completion of assessment. The petitioner against the levy of interest u/s 234A and 234B among other grievances, has moved an application u/s 154 to rectify the same. As per the petitioner, he has already paid the self-assessment tax along with interest amounting to INR 0.71 lacs and therefore there should not have been charged any interest. However, the AO disagreed with the contention of the petitioner by observing that as per the Explanation appended below section 140A, the self-assessment tax paid is required to be first adjusted towards the interest payable by him and the balance shall be adjusted towards the tax payable. Accordingly, the interest payable u/s 234B was re-worked after giving credit to tax paid of INR 0.71 lacs and after adjustment of interest payable by him u/s 234A and 234C. The petitioner thereafter preferred an appeal before the Ld. CIT(A) wherein the petitioner had claimed that he has already paid self-assessment tax with interest and therefore no interest should be charged under the aforementioned sections for the period attributable after the payment of self-assessment tax. It was also submitted by the petitioner that the interest under the provisions of Sec 234A, 234B and 234C are compensatory in nature. The Government should not incur loss of revenue on account of late payment of taxes. However, the Ld. CIT(A) has disregarded the contentions of the petitioner by treating the provision of section 234A, 234B and 234C as mandatory and penal in nature being fastened by the statute automatically stating that the AO has correctly charged the interest as per the stated provisions, and the request of the petitioner for curtailing the interest u/s 234A, 234B up to the date of payment of self-assessment tax, being beyond the scope of section 154, was not allowed. The petitioner therefore raised following grounds of appeals before the Tribunal:

- That the learned CIT(Appeals) has grievously erred in law and on facts in upholding the action of the learned AO in charging the interest u/s 234A and 234B beyond the date on which self-assessment tax including interest u/s 234A, 234B and 234C up to that date is already paid.
- That the learned CIT(Appeals) has grievously erred in law and on facts in not appreciating the contention of the appellant that interest u/s. 234A and 234B are compensatory in nature and not penal in nature and they are levied to compensate revenue in order to avoid it from being deprived of payment of tax.

Ruling

ITAT placed reliance on Bombay High Court's judgement in the case of CIT v. Kotak Mahendra Finance Ltd. [2004] 265 ITR 119, wherein the Court had observed that it was well-settled that interest u/s 234B was compensatory in character and that it was not penal in nature. ITAT further relied upon Dr. Prannoy Roy v. CIT [2002] 254 ITR 755 wherein it was held that the interest u/s 234A was also compensatory in nature and unless any loss was caused to the revenue, the same could not be charged from the petitioner. Placing reliance on these citations, the Tribunal adjudicated that the interest u/s 234A and 234B can be levied up-to the date of self-assessment tax paid by the petitioner along with the interest and not to the period beyond that date. Hence, the order of the learned CIT-A was quashed with the direction to the AO to delete the interest charged by him. In the result, the appeal filed by the petitioner was allowed.

Source: ITAT Rajkot Bench in Dhirendra Narbheram Sheth vs ITO vide [2023] 147 taxmann.com 150 (Rajkot - Trib.) dated February 03, 2023

Value determined by DVO on the basis of estimation; additions made on basis of such estimated value could not be foundation for under-reported income for purpose of imposition of penalty u/s 270A

Facts

The petitioner is engaged in the business of Solar power generation. Return was filed declaring total income at Nil. Assessment was completed u/s 143(3) at total income of INR 2.80 crores making an addition of equal amount u/s 43CA. The petitioner had sold certain land on various dates at a price less than the stamp value. The AO proposed to make addition on the basis of stamp value. The petitioner made a request for making a reference to the DVO. The AO completed the assessment by taking note of stamp value in certain other cases subject to rectification on the receipt of report of the DVO. Thereafter, the report was received, pursuant to which the rectification order was passed u/s 154 reducing the addition to INR 7.05 lacs. The addition was computed by taking note of the value declared by the petitioner at INR 71.84 lacs and the value determined by the DVO at INR 78.89 lacs. On this basis, the AO rectified the original assessment and also imposed penalty u/s 270A at INR 7 lacs. The ld. CIT(A) affirmed the penalty. Aggrieved thereby, the petitioner has come up in appeal before the Tribunal.

Ruling

ITAT held that having heard both the sides and gone through the relevant material on record, it is seen that the only basis for imposition of penalty u/s 270A is the making of addition u/s 43CA on the strength of report of the DVO. The AO originally took certain comparable circumstances and computed the amount of addition at INR 2.80 crores, which got reduced on the receipt of report of the DVO to INR 7.05 lacs. Further, ITAT also stated that having gone through the report of the DVO, it is apparent that the value determined by the DVO is again an estimate, inasmuch as he considered certain other properties at different rates and then averaged such rates to find out the value which the property ought to have realized on the transfer. It is vivid that the difference between the value declared by the petitioner and the value determined by the DVO is minimal and further the value of the DVO is on the basis of value of certain other nearby properties.

ITAT further stated that it is ostensible from the language of sub-section (6) that an addition made on the basis of estimation cannot provide foundation for under-reported income for the purpose of imposition of penalty u/s 270A. As the only basis of the addition is the estimate made by the DVO, we hold that the penalty cannot be sustained. The penalty was therefore deleted and the appeal was allowed.

Source: ITAT Pune in Jaibalaji Business Corporation (P.) Ltd. vs ACIT vide [2023] 147 taxmann.com 333 (Pune - Trib.) dated February 10, 2023

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