Tax Matters

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The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during November 2023:

Income tax rulings

- **Assessment order passed by Faceless Assessing Officer two years after the DRP directions declared as time-barred and unsustainable.**

  - ACIT, PCIT vs Vodafone Idea Limited[1], (Bombay)

The taxpayer, a company engaged in the telecom sector, had filed its Return of Income for FY 2015-16, claiming a refund of prepaid taxes comprising of Tax Deducted at Source ('TDS') and Advance Tax. The taxpayer's case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 ('the Act') was issued.

Since the taxpayer had undertaken international and specified domestic transactions with its Associated Enterprises during the relevant FY, the Tax officer had referred the case to the Transfer Pricing officer ('TPO') for the determination of Arm's Length Price. TPO passed an order proposing an adjustment to the value of the international transaction. The tax officer passed a draft order under Section 144C(1) of the Act for the relevant year and proposed various additions/disallowances.

The taxpayer filed objections with the Dispute Resolution Panel ("DRP") against the aforesaid draft order. The DRP issued directions on 25 March 2021 and uploaded it on the Income Tax Business Application ("ITBA") portal on the same date. However, the tax officer passed the final order under the e-assessment scheme, on 23 August 2023 i.e. more than two years after the directions of DRP i.e. beyond the prescribed period for passing the order.

The taxpayer filed a Writ Petition challenging the aforesaid assessment order alleging that the assessment order was infructuous and refund as computed in the ROI of INR 11.28 billion should be allowed with the interest.

While the scrutiny under in the taxpayer's case had commenced under the old assessment regime, due to the implementation of the Faceless Assessment regime, the entire assessment was governed by the Faceless Assessment Scheme, 2019. The tax authorities contended that because of the commencement of the Faceless Assessment Regime, the directions given by DRP were not received by the Faceless Tax Officer ('FTO') and therefore the FTO did not pass the order. In their defence, the tax authorities further added that the directions of the DRP were noted on the FTO's portal only on 23 August 2023 and hence that is the day he should be deemed to have received it. Considering 23 August 2023 as the date of receipt of DRP directions, the final order was passed within the specified timeline of 30 days.

The Division bench of Bombay High Court ('HC') relies on the HC ruling in *Shell India Markets Private Limited*[2] and issued a judgment in favour of the taxpayer. It was observed that any

[1] W. P. (L) NO. 15398 OF 2023 (Bombay High Court)

2 W. P. NO.3298 OF 2021 (Bombay High Court)

notice, summons order is deemed to have been received by the FTO once it is available to the National eAssessment Centre ('NeAC') portal. It was held that there was a failure on the part of the FTO to act in accordance with the provisions of the Act and a lack of diligence on the part of concerned officials. Therefore, the HC directed to grant the refund of INR 11.28 billion along with interest.

JMP Insights - *The above judgement emphasized on adherence to the provisions of laws and regulations, the failure to comply with which may result in a huge loss not only to the taxpayers but also to the exchequer.*

- **Dispatching of notice and posting the matter in the Cause list are not sufficient communication for hearing.**

  - M/s Ejaz Tanning Company v Assistant Commissioner of Income Tax[3]

The Tribunal in its order ('Original order') had allowed the Taxpayer's appeal. It was held that the Order Giving Effect to the revision of the assessment order by CIT (under section 263) was barred by limitation.

The tax authorities filed a Miscellaneous Application ('MA') against the aforesaid Original order under section 254 requesting to rectify a mistake apparent from record. The Tribunal recalled its Original order, calling it a case of wrong application of law and directed a fresh hearing. This MA order was passed by the tribunal ex-parte.

The taxpayer therefore filed a Writ Petition before Madras High Court ('HC') against the Tribunal's MA order. The taxpayer's objections were on two grounds – Firstly, there were no 'mistakes apparent on record' in the Tribunal's Original order and accordingly, it could not be rectified through an MA. The tax authorities should have instead filed an appeal with the High Court. Secondly, the taxpayer had not received the notice of the hearing for the MA.

The tax authorities argued that the notice was indeed issued to the taxpayer. The taxpayer failed to attend the hearing and the MA order was issued ex parte.

The taxpayer further contended that the procedure, as laid down in Rule 19 and Rule 34A of the Income Tax (Appellate Tribunal) Rules, 1963 was not followed. Mere issue of notice by tax Authorities cannot be treated as notice being communicated. According to the Indian Contract Act, 1872 communication shall be complete when the party to the contract has the knowledge of such communication.

The HC held that a reasonable opportunity of being heard should be provided to both parties. The Tribunal had merely dispatched the notice of hearing and there is no record to show that such notice was received by the taxpayer. Mere posting of the date of hearing of the MA in the Cause List is not sufficient. The taxpayer should be provided with the date and place of hearing and a copy of the memorandum of appeal, which is the requirement as per the procedure laid down in the rules. The procedure of issuing appeal copy filed along with the date and place of hearing was not followed. The MA order passed by the tribunal was set aside by the HC and the case was remanded back to the Tribunal for a fresh hearing.

[3] W.P.No. 22769 & W.M.P no 22222 & 22223 of 2023 (Madras High Court)

JMP Insights *– Based on the principles of natural justice, both parties should be allowed a reasonable opportunity of being heard before the order is passed. Since the time limit of four years is allowed to the tribunal to pass the order in an MA matter, it is only fair that the date and time of the hearing is properly communicated to both parties. The decision thus emphasizes that adherence to the procedure for dealing with MA stated in the Income tax (Appellate Tribunal) Rules necessary.*

- **Reassessment proceeding over capital gain quashed on the production of the sale deed**

  - Mr. S Uttam Chand v Assistant Commissioner of Income Tax[4]

The taxpayer filed the Return of Income for Financial Year ('FY') 2012-13 disclosing INR 100 million (approx.) from the sale of agricultural land as Exempt Income under the Heading - Others in Schedule – EI (Exempt Income). Subsequently, the tax officer had sent a questionnaire wherein certain information regarding the agricultural land was called for. In response, the taxpayer had furnished the ledger accounts and the sale deed for the property.

The taxpayer was issued a notice under section 147 the Act on 30.3.2021 i.e. beyond the limited period of 4 years. Reopening is permitted beyond a period of 4 years only in the event of any failure on the part of taxpayer to disclose income.

The taxpayer filed a Writ Petition challenging the reopening of the assessment beyond the limitation period.

The tax officer argued that the notice was issued to obtain clarification and no prejudice would be caused in providing the information. The taxpayer was asked to clarify whether the land sold was agricultural. The reason for such clarification was to determine whether the taxpayer had manipulated any documents as there was ample time difference between the issue of the questionnaire by the tax officer and the submission of documents by the taxpayer in response. The tax officer also referred to the Explanation to section 147(1) which stated that production of books of account and other evidence is not sufficient disclosure.

The Madras High Court ('HC') after hearing arguments of both parties, held that the taxpayer has disclosed the gain in the exempt income schedule and on receipt of a request from the tax officer, furnished the details of the agricultural property including the sale deed. There was no non-disclosure of information of income on the part of the taxpayer based on the documents produced before the HC. The High Court held that the reassessment notice issued is invalid and not sustainable.

JMP Insights *– While the time limit for the issue of notice has undergone significant amendment, the decision has persuasive value.*

[4] W.P.No 6921 & 6963 of 2022 (Madras High Court)

- **Delhi Tribunal rules voluntary contribution with specific directions to be non-taxable**

  - ACIT New Delhi v M/s Financial Inclusion Trust[5]

The taxpayer was denied registration under Section 12A of the Income Tax Act, 1961 ('Act'). In March 2009,it received a corpus donation from another trust registered under section 12A of the Act with specific directions for the utilization of the amount. Since the taxpayer was an unregistered trust, the Tax Officer denied exemptions under Section 11(1)(d) of the Act and treated the donation as income of the taxpayer.

The Tribunal took cognizance of the letter given by the Donor Trust to the Donee which outlined how the corpus grant was to be utilised. The aforesaid letter highlighted that the Donee was required to maintain a special fund that was to be used for the specified purpose. Further, a fraction of the total donation was to be used for the initial setting up of the separate fund.

The Tribunal relied on the judgment passed by the Vizakapatnam Tribunal in the case of Hosanna Ministries[6] on a similar issue. In the said judgment, different rulings in case of Indian Society of Anaesthesiologists V. 8[7], Vokkaligara Sangha[8] and Serum Institute of India Research Foundation[9] were referred where it was held that corpus-specific voluntary donations, being in the nature of capital receipts, are outside the scope of income under Section 2(24)(iia) of the Act, even for the period prior to the Trust's registration under section 12AA of the Act. The Tribunal held that provisions of Section 2(24)(iia) need to be read along with Section 12, wherein it is provided that voluntary contributions ***not being contributions made with a specific direction to form part of the corpus*** shall be deemed to be the income of the charitable institution. Relying on the above judicial precedents, Tribunal ruled in favour of the taxpayer.

JMP Insights – *There are several judgments, including those discussed above, wherein it has been held that donations made with specific directions that they shall form a part of the corpus, being capital in nature, should not be treated as income of the charitable institution.*

[5] ITA No 2001/Del/2020 (Delhi Tribunal)
[6] ITA No 558/VIZ/2018, 286/VIZ/2019
[7] [2014] 47 Taxmann.com 183 (Chennai Tribunal)
[8] [2015] 44 CCH 0509 (Bangalore Tribunal)
[9] [2018] 90 taxmann.com 229 (Pune - Tribunal)

DID YOU KNOW?

The Income Tax Department has added a new 'Discard' feature to the online portal which allows taxpayers to delete the Income Tax Return Form before it is verified. This feature will allow taxpayers to resubmit the form instead of filing a revised Return of Income. It is important to note that the option to discard can only be used for returns that are pending verification.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

JMP Advisors Private Limited

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India
T: +91 22 22041666, E: info@jmpadvisors.in, W: www.jmpadvisors.com

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