Case Law Discussion

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S.Ramasubramanian
Chartered Accountant
Partner
MSSV & Co

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Facts:

- Wipro Finance is in the business of leasing equipment
- For the purpose of its business, it purchased equipment in India and leased it to customers in India.
- To finance the purchase cost, it borrowed in foreign currency.
- The initial liability in rupee terms was stated at the prevalent exchange rate on the date of borrowing.
- On the balance sheet date or on the date of repayment, the exchange rate was unfavorable and the liability in rupee terms was more than the initially recognized amount.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Facts:

- The increase in liability was Rs. 3.56 crores.
- Out of the above Rs. 1.10 crore was claimed as revenue loss.
- A sum of Rs. 2.46 Crore was capitalized.
- The AO disallowed the claim and allowed depreciation.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Facts:

- On appeal before the tribunal, the assessee filed an additional ground stating that the sum of Rs. 2.46 crores should also be allowed as a revenue loss.
- The ITAT admitted the additional ground.
- It was held that the entire sum of Rs. 3.56 crores is to be allowed as a revenue loss.
- On appeal to high court, the decision of ITAT was reversed.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Issues before the Supreme Court

1. Whether the tribunal was right in admitting the additional ground?

2. Whether the high court was right in holding that the sum of Rs. 3.56 crores is not a revenue loss?

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Decision:

- It was held that the tribunal can always admit an additional ground which is legal in nature.
- The decision in National Thermal Power Company Ltd. Vs. CIT 229 ITR 383 was relied.
- The department relied on the decision in Gotez (India) Limited Vs. CIT 284 ITR 323 to contend that additional ground cannot be admitted since the claim was not made in the return.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Decision:

- The court rejected this argument pointing out that the Gotez (India) itself has been held that the decision will not apply to grounds raised before the appellate authorities.
- Section 43A of the Act is not applicable as the assessee has not purchased the equipment from outside India.
- Section 43A would apply only if the asset has been purchased or acquired from outside India.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Decision:

- There is no dispute that the amount was borrowed for the purpose of business and in fact actually utilized for the purpose of business.
- Hence, the exchange loss is to be treated as a revenue loss.
- Support was taken from the decision in Empire Jute Company Ltd 124 ITR 1.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Point for discussion:

- The attention of the court was not drawn to its earlier decision in CIT Vs. Sutlej Cotton Mills Limited 116 ITR 1 and Woodward governor 312 ITR 254.
- In Sutlej Cotton Mills, a decision of two judges division bench, it was held that the profit or loss arising on account of exchange rate fluctuation would be on revenue account if the foreign currency is held as a trading asset.
- On the other hand, if the foreign currency is held as a capital asset, the profit or loss would be on capital account.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Point for discussion:

- Though the decision in Sutlej cotton Mills was with reference to the foreign currency held abroad, the ratio would apply even in respect of a loan.
- Generally, a loan taken for the purpose of acquiring a capital asset can said to be of capital nature.
- Therefore, any profit or loss w.r.t. such loan would be on capital account.
- In Woodward Governor, one of the issues before the Supreme Court was whether the year-end conversion loss on account of foreign exchange fluctuation in respect of a loan taken for the purpose of acquiring a capital asset is to be added to the cost.

WIPRO FINANCE LIMITED VS. CIT 443 ITR 250

Point for discussion:

- Though the issue whether such a loss could be treated as revenue loss was not before the court, there was no dispute that it was on capital account.
- The ratio of the decision in CIT vs. Mahindra & Mahindra Limited 404 ITR 1 to be considered.
- Effect of section 43AA introduced with effect from AY 2017-18 to be discussed.
- The foreign exchange fluctuation on account of amount borrowed in foreign currency is a monetary item and hence it has to be treated as income or loss.
- There should be no controversary with effect from AY 2017-18 that the foreign exchange loss / income is on revenue account.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Facts:

- The appeal relates to the validity of the assessment order passed on 11-08-2011 under section 153A on a non-existent entity.
- Mahagun Realtors (P) Ltd (MRPL) was amalgamated with Mahagun India Private Limited (MIPL).
- The order of amalgamation was passed by High court on 10-09-2007.
- The appointed date was 01-04-2006.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Facts:

- The Mahagun group was subject to a search on 27-08-2008.
- Documents relating to MRPL were seized.
- In a common statement, the directors accepted that MRPL has concealed some income.
- The directors did not mention that MRPL has been merged with MIPL during the course of search.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Facts:

- A Notice under section 153A was issued and the return was filed in the name of MRPL with its PAN.
- It appears that during the course of the hearing, it was brought to the notice of the AO that MRPL was merged with MIPL.
- The assessee submitted as a fact that on 30-05-2008 the department was informed about the amalgamation.
- AO passed an assessment order describing the assessee as under:
  - “Mahagun Realtors Private Limited represented by Mahagun India Private limited”

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Facts:

- On appeal to the tribunal, it was held the assessment made in the name of the MRPL is a nullity as it is made on a non - existent person.
- High court upheld the above order.
- Department appealed to Supreme Court.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Issues before the Supreme Court:

- Whether on the facts or the circumstances of the case, the assessment made in the name of the MRPL was valid or a nullity.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

Decision of the Supreme Court:

- The Supreme court held that the assessment order passed is valid. The supreme court distinguished its earlier decision in Principal CIT Vs. Maruthi Suzuki ltd 416 ITR 613. The following factors influenced the court to come to the above decision.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- <u>Decision of the Supreme Court:</u>
- The following factors influenced the court to come to the above decision:
  - The assessee did not inform the department about the amalgamation during the search.
  - The assessing officer was informed about the amalgamation only during the proceedings for the assessment years 2007-08 and 2008-09 on 22-07-2010 and not for AY 2006-07.
  - The return was filed in the name of MRPL with its PAN even though the High court has passed the amalgamation order on 10-09-2007.
  - During the search proceedings, the directors conceded that MRPL had concealed its income and they offered to pay tax.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- Decision of the Supreme Court:
- Unlike winding up of a company, in the case of an amalgamation the business continues though the identity of the amalgamating company is lost.
- Since the business continues, the assessment can be made in the name of the amalgamating company.
- The participation in the assessment proceedings was by MRPL as in the correspondences with the department, it held out itself as MRPL.
- In the appeal also, the assessee described itself as MRPL represented by MIPL.

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- Points for discussion:
- Despite the admission by the revenue before the Supreme court that the assessing officer was appraised of amalgamation during the assessment proceedings (see para 11 of page 203 of 443 ITR).
- Despite assessee submitting that it had informed the AO about the amalgamation on 30-05-2008 and 22-07-2010.
- The court held that the AO has not been informed.
- Is the court's finding that the letter dated 22-07-2010 was filed during the course of assessment proceedings for assessment year 2007-08 & AY 2009-09 and hence, for AY 2006-07 the assessee did not inform the A.O is correct in law when the assessment order for AY 2006-07 was passed on 11-08-2011?

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- <u>Points for discussion:</u>
- The court's attention was also not drawn to the fact that the department would have been served with notice of proposed amalgamation when such proceedings were initiated in the appropriate company court (High Court).
- The department is a necessary party in the amalgamation proceedings.
- When the jurisdictional Commissioner is a party to the amalgamation proceedings, can the AO say that he is not aware of the amalgamation?

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- <u>Points for discussion:</u>
- The fundamental question is whether an assessment can be made on a non- existent person?
- Can the assessee be estopped from taking this jurisdictional ground even if it is assumed that it has not informed the AO?
- Is the court right in saying that MRPL participated in the assessment proceedings?
- Can a non- existent person ever participate?

PRINCIPAL CIT VS. MAHAGUN REALTORS (P) LTD 443 ITR 193

- <u>Points for discussion:</u>
- After amalgamation, how can MIPL represent MRPL which is a non existent entity?

With utmost respect, it is submitted that this decision may not be correct in law and it is hoped that in an appropriate case the larger bench of the Supreme Court decide the case appropriately.

CREATIVE MUSEUM DESIGNORS VS. ITO (EXEMPTIONS) 443 ITR 173 (CALCUTTA)

- Facts:
- Assessee is a company registered under section 25 of the Companies Act, 1956. The assessee was registered under section 12A & section 80G of the Act. Assessee's main activity is to design and construct museum and act as a curator.
- The assessee entered into with the contracts with the RBI and Surat Municipal Corporation for conceptualization, design and construction of museum.
- For the AYs 2013-14 to 2015-16, the AO denied the exemption under section 11 on the ground that 13(8) of the Act applies.
- The AO held that the assessee is mainly engaged in the business and therefore, it is not entitled to exemption under section 11.
- This view of the AO was upheld by CIT(A) and the ITAT.
- The tribunal held that the assessee only acts as a contractor and actual curating of the museum is done by the customers like RBI / Surat Municipal corporation. The museum is owned by these entities and not the assessee.

- Assessee filed an appeal to the High Court.

CREATIVE MUSEUM DESIGNORS VS. ITO (EXEMPTIONS) 443 ITR 173 (CALCUTTA)

- <u>Issues before the High Court:</u>
- Whether the activity of the assessee in setting up museums, etc. is hit by first proviso to section 2(15) and consequently section 13(8) would apply?
- Whether exemption under section 11 can be denied when assessee has been granted registration under section 12A of the Act?
- Whether the assessee is engaged in charitable activities relating to Education?

CREATIVE MUSEUM DESIGNORS VS. ITO (EXEMPTIONS) 443 ITR 173 (CALCUTTA)

- Decision:
- The court held that conceptualizing , developing and constructing andestablishing the museum are the activities carried out by a curator.
- Assessee cannot be branded as a mere contractor.
- A Museum is not merely constructed but conceived and developed.
- The fact that the assessee is registered under section 25 of the Companies Act is relevant in deciding whether it is a charitable institute or not though not decisive.
- Assessee can said to be engaged in the activity of education.
- Education as occurring in section 2(15) of the Act cannot be restricted to formal school or college education.
- Dissemination of knowledge through a museum or a science park would undoubtedly fall within the meaning of education.
- Assessee is entitled to exemption.

CREATIVE MUSEUM DESIGNORS VS. ITO (EXEMPTIONS) 443 ITR 173 (CALCUTTA)

- Points for discussion:
- The High Court has not considered the judgement of the Supreme Court in Sole Trustee Loka Shikshana trust vs. CIT 101 ITR 234 wherein it was held that education connotes a process of training and developing the knowledge of students by normal schooling and has not been used in a wide and extensive sense.
- Though education need not be imparted only in schools and colleges, the institutions rendering educational services should have formal pedagogy and system of instructions.
- Just because a person visits museum, science park and enriches his knowledge, it cannot be said that the person is getting educated in the sense it is used in section 2(15) of the Act.

CREATIVE MUSEUM DESIGNORS VS. ITO (EXEMPTIONS) 443 ITR 173 (CALCUTTA)

- <u>Points for discussion:</u>
- Having held the activity of the assessee is education, the court has not seriously addressed section 13(8) for the reason that it will apply only to a trust having objects of general public utility.
- The next point to be discussed is whether the court is right in holding that just because the assessee conceptualizes, develops and constructs museums it can said to be a curator and keeper of the museums when it has no stake in the museums after construction.

ASHISH JAYANTHILAL SANGHAVAI VS. ITO 444 ITR 457

Facts:

- Assessee Mr. Ashsish Jayanthilal Sanghavai is a diamond merchant.
- According to him, his employee, Parin Sheth went to shop of M/s. Akash Diamonds to deliver the diamonds which were sold to Akash Diamonds and get the acknowledgement in the invoice.
- When he was in the shop of M/s. Akash Diamonds, there was a search
- When he was in shop, diamonds were seized from Mr. Parin Sheth. He gave a statement that the diamonds belong to him.
- The statement was retracted later.

ASHISH JAYANTHILAL SANGHAVAI VS. ITO 444 ITR 457

Facts:

- Mr. Sanghavai made a application under the first proviso to section 132B(1)(i)
- This application was not acted upon.
- The diamond were not released within 120 days from the date on which the last of the authorizations for search was executed.
- A writ petition was filed for release of diamonds.
- Assessee contended that he is the owner of the diamonds and they were accounted in his books. Since the diamond was not released within 120 days, the court should direct the department to release the diamonds.

ASHISH JAYANTHILAL SANGHAVAI VS. ITO 444 ITR 457

Facts:

- The department contended that the diamond belongs to Parin Sheth and the assessment proceedings are pending against Mr. Sheth.
- Hence, the department cannot release the diamonds to Mr. Sanghavai.

ASHISH JAYANTHILAL SANGHAVAI VS. ITO 444 ITR 457

Decision:

- Relying on the decision of the Hon'ble Gujarat High Court in Nadim Dileep Bhai Panjvani Vs. ITO 383 ITR 375, it was held that if no decision is taken within the time specified in second proviso , the assets have to be released, the court ordered the release of the diamonds.

ASHISH JAYANTHILAL SANGHAVAI VS. ITO 444 ITR 457

Points for discussion:

- Is the court right in ordering the release of diamonds without a clear finding that the diamonds belong to Mr. Sanghavai?
- Court has not considered the provision of section 132(4A)
- Based on the presumption under section 132(4A), diamonds belong to Prain Sheth.
- Has this presumption been rebutted?
- Court failed to consider 132B(3) which mandates the release of the asset to the person from whose custody the assets were seized.
- An interesting question that can be discussed is whether 132B(3) would apply to a proviso case.

eSHAKTI.com Private Limited v ACIT 444 ITR 257

Facts:

- For AY 2016-17 & 2017-18, notices under section 143(2) were issued.
- Subsequently, notice under section 142(1) was issued.
- Assessments were completed after considering the reply.
- Assessee filed a writ petition contending that show cause notice (SCN) as per instruction no. 20/2015 dated 29-12-2015 (380 ITR ST 36) was not issued.
- Hence, the assessment is bad in law.
- CBDT filed an affidavit contending that the instruction applies only to assessment year 2014-15 and not to other assessment years.
- But it conceded that the principles of natural justice have to be followed.

eSHAKTI.com Private Limited v ACIT 444 ITR 257

Decision:

- It was held that Instructions regarding issue of SCN will apply to other years also.
- Since the instruction has not been followed the assessment has to be set aside.
- AO was directed to issue SCN, give a reasonable opportunity to the assessee to file the reply and then pass the assessment order after fairly considering the reply.

eSHAKTI.com Private Limited v ACIT 444 ITR 257

Points for discussion:

- Based on this decision perhaps an additional ground can be raised in respect of pending appeals.
- Will the ratio of the judgement apply to assessment year prior to AY 2014-15.

DAUJEE ABHUSHAN BHANDAR PRIVATE LIMITED VS. UOI 444 ITR 41

Facts:

- For the assessment year 2013-14 notice under section 148 dated 31-03-2021 [as extended by Taxation and other laws (Amendment) Act 2020 (TOLA)] was digitally signed on 31-03-2021.
- The e-mail with the notice was received by the assessee on 06-04-2021. Assessee filed a writ petition contending that the notice has been issued beyond the limitation even after considering the TOLA extension.
- The department contended that digitally signing the notice on 31-03-2021 would amount to issue.

DAUJEE ABHUSHAN BHANDAR PRIVATE LIMITED VS. UOI 444 ITR 41

Decision:

- Court noted that under section 149, the time limit expired on 31-03-2020 which got extended to 31-03-2021 under TOLA.
- It noted the provisions of section 282(1)(c) which stipulates that notice can be served in the form of electronic record as provided in chapter IV of Information Technology Act.
- It noted section 282A and Rule 127A which provides for the manner of the authentication of any document issued by the department.
- Section 13 of the Information Technology Act, which states that save as otherwise agreed to between the originator and the addressee, the dispatch of the electronic record occurs when it enters a computer resource outside the control originator.
- Relying on the language used in section 282A(1), it held there is a difference between signing of notice and issuance of notice. They are 2 different acts.

DAUJEE ABHUSHAN BHANDAR PRIVATE LIMITED VS. UOI 444 ITR 41

Decision:

- As per section 13 of the Information Technology Act, the issue happens only when the e-mail enters the computer resource outside the control of the originator.
- Since, the e-mail reached the computer resource of the assessee only on 06-04-2021, the notice is time barred.

DAUJEE ABHUSHAN BHANDAR PRIVATE LIMITED VS. UOI 444 ITR 41

Points for Discussion:

- The court has not considered the technical process of the delivery of the e-mail.

My guess is that the following is the technical process:

- Probably, when the originator sends the e-mail, it immediately reaches the e-mail server of the service provider to the originator.
- Probably this server will send the mail to the email server of recipient's service provider.

Server of the Service Provider to the recipient delivers the mail to the local system of the recipient.

- Server of the service provider is outside the control of the originator. Therefore, the issue happens when it reaches the e-mail server of the service provider.

DAUJEE ABHUSHAN BHANDAR PRIVATE LIMITED VS. UOI 444 ITR 41

Points for Discussion:

Let us consider the following example:

- The department sends the email at 11:45PM on the last day of limitation .
- It reaches the server of the service provider immediately.
- But due to certain technical problems the further delivery gets delayed and the mail gets delivered to the recipient at 00:15 Hrs on the next day. Can it not be said that the notice has been issued on the last date of the limitation itself as it has entered a computer resource outside the control of the AO.

STATE BANK OF INDIA VS. ACIT 442 ITR 363

FACTS:

- Assessee provided leave travel concession (LTC) to its employees. The employees started the journey from their headquarters and the destination was also in India. But the tour was arranged in such a way that the employee travelled to a place outside India, returned to India and reached his destination in India.
- The State Bank of India treated the LTC as exempt under section 10(5) of the Act and did not deduct tax at source.
- The State Bank of India had relied on a letter dated July 12 2012 wherein IBA has considered the employee taking a round route and not a direct route and gave a guidance that in such a case the reimbursement must be restricted to the direct route fare.

STATE BANK OF INDIA VS. ACIT 442 ITR 363

FACTS:

- The TDS officer passed an order under section 201 saying that the exemption under section 10(5) is not available since the employee has travelled abroad.
- State Bank of India contended that the ultimate destination is in India only and it has restricted the exemption to the direct route fare to the destination in India.
- It has acted in a bonafide manner based on circular of IBA.

STATE BANK OF INDIA VS. ACIT 442 ITR 363

Decision:

- The court held that the intention of the legislature is to allow the exemption under section 10(5) only if the journey is performed within India.
- Since, the employee has travelled abroad, exemption under section 10(5) is not available.
- It also rejected the contention of the State Bank of India that it acted on a bonafide belief based on the IBA circular and therefore proceedings under section 201 have been validly taken.

STATE BANK OF INDIA VS. ACIT 442 ITR 363

Points for discussion:

- Is the Hon'ble court correct in holding that just because the employee travelled abroad the exemption under section 10(5) is not applicable?
- It is respectfully submitted that there is nothing in section 10(5) which bars the exemption if the employee visits abroad during the course of the journey when the final destination is in India.

STATE BANK OF INDIA VS. ACIT 442 ITR 363

Points for discussion:

- Exemption should be given, but, restricted to the direct route fair as provided in Rule 2B.
- It is also respectfully submitted that the court has not brought any material on record to show the legislative intent that if in the course of journey, the employee travels abroad, exemption is not available.
- It is also respectfully submitted that bonafide belief of State Bank of India has not been properly considered.

RITTAL INDIA PRIVATE LIMITED Vs. ACIT ITA No. 2868/B/18

Facts:

- The assessee entered into international transactions with its associated enterprise.
- Assessment year involved is 2014-15.
- The assessee's case was selected for scrutiny.
- Reason for scrutiny selection was not transfer pricing risks adjustments.
- In none of the earlier years there was any TP adjustment in excess of Rs. 10 crore.

RITTAL INDIA PRIVATE LIMITED Vs. ACIT ITA No. 2868/B/18

Facts:

- The AO referred the matter to the TPO.
- During the TP proceedings, the assessee did not object to the reference.
- The TPO passed an order suggesting an upward ALP adjustment and the same was incorporated in the draft assessment order.
- The assessee filed petition under section 144C before the DRP.
- One of the grounds raised before the DRP was that the reference to the TPO was void ab initio as it is in violation of instruction 3/2016 dated 29-02-2016.

RITTAL INDIA PRIVATE LIMITED Vs. ACIT ITA No. 2868/B/18

Facts:

- DRP rejected this argument on the following grounds:
  a) The assessee did not raise any objection during the TP proceedings.
  b) The instruction is only a procedural instruction and since the approval of the CIT has been taken there is no infirmity in referring the matter to the TPO.

- Assessee filed an appeal before the ITAT.

RITTAL INDIA PRIVATE LIMITED Vs. ACIT ITA No. 2868/B/18

Decision:

- ITAT relying on the decision of the Pune ITAT in Sava Healthcare Limited vs. DCIT held that reference has been made in violation of instruction no. 3/2016.
- Instruction no. 3/2016 is mandatory and not merely procedural. Hence, the reference is void.
- Consequently, TP adjustment was deleted without going into the merits of the case.

RITTAL INDIA PRIVATE LIMITED Vs. ACIT ITA No. 2868/B/18

Point for discussion:

- In this case, the only addition made was TP addition and therefore, the assessee did not press the ground that the assessment is barred by limitation.
- Reference to the TPO is bad in law. The assessee is not an eligible assessee and hence, section 144C is not applicable. If section 144C is not applicable assessment should be completed within the time limit specified in section 153(1). Since it has not been done so, the assessment is barred by limitation.

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Reassessment - Notice issued prior to 31-03-2021- Continuation after 1-4-2021

<u>Points for discussion:</u>

- Sections 147 to Section 150 were substituted w.e.f. 01-04-2021 by the Finance Act, 2021.
- There is no saving clause saving the unamended provisions.
- Point for discussion is whether the AO can continue the proceedings in respect of a notice issued u\s 148 prior to 31-3-21 even though there is no specific saving clause.

Reassessment - Notice issued prior to 31-03-2021- Continuation after 1-4-2021

<u>Points for discussion:</u>

Following are the relevant points to be noticed and discussed:

- The impact of absence of a specific saving clause.
- Substitution, would result in repeal.
- As per various decisions of the Supreme Court in Fibre Boards (PE) Ltd vs. CIT 376 ITR 596 & State of Orissa and Tulloch and Co 1964 4 SCR 461, repeal would include a partial repeal.
- Refer to the discussion in Mon Mohan Kohli vs ACIT 411 ITR 207, Sudesh Taneja Vs. ITO 444 ITR 289

Reassessment - Notice issued prior to 31-03-2021 Continuation after 1-4-2021

<u>Points for discussion:</u>

- Extract of section 6 of general clauses Act :

6. Effect of repeal.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

Reassessment - Notice issued prior to 31-03-2021 Continuation after 1-4-2021

Points for discussion: (Extract continued)

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Reassessment - Notice issued prior to 31-03-2021 Continuation after 1-4-2021

<u>Points for discussion:</u>

- Since partial repeal is also a repeal, section 6 of General Clauses Act would apply. Specifically, we have to examine whether section 6(e) of General Clauses Act would apply by saying that the department had acquired a right to proceed under unamended section 147 to section 150 and therefore, it can continue the proceedings.

Reassessment - Notice issued prior to 31-03-2021 Continuation after 1-4-2021

<u>Points for discussion:</u>

- Whether the principle that a repeal followed by a fresh enactment on the same subject, unless there is a contrary intention, section6 of the General Clauses Act would apply.
- Is there a contrary intention of not continuing with unamended law in view of FM’s speech in parliament and the Memorandum explaining the provisions of Finance Bill, 2021.

Reassessment - Notice issued prior to 31-03-2021 Continuation after 1-4-2021

<u>Points for discussion:</u>

- Absence of provision similar to section 142(4), 297(2)(d)(i) to be discussed.

Reassessment - Notice under unamended S.148 issued between 1-4-201 and 30-6-21

Points for discussion:

The impact of Ashish Agarwal decision 444 ITR 1.

- Supreme court in 444 ITR 1 held that all notices issued after 01-04-2021 by applying the power granted under the notifications issued under TOLA should be treated as the notice issued under section 148A (b) of the Act.
- Board had issued instruction no 1/2022 dated 11-05-2022 giving instructions and guidelines to implement the supreme court judgement.
- In para 6.2(ii) of the circular, the board says that for the AY 2016-17 and AY 2017-18 notice under section 148 can be issued under clause (a) of section 149(1) as amended.

Reassessment - Notice issued prior to 31-03-2021

Points for discussion:

- In para 6.2(ii) of the circular, the board says that for the AY 2016-17 and AY 2017-18 notice under section 148 can be issued under clause (a) of section 149(1) as amended.
- The normal time limit for AY 2016-17 under the amended law has already expired on 31-03-2021 taking into account TOLA extension. For. A.Y2017-18 , limitation expired on 31-3-21 and TOLA exytension is not applicablev for limitation expiring on 31-3-21. How can the CBDT say that for A.Ys 2016-17 and 2017-18 notices can be issued under the amended law when on the date of amendment coming into force, limitation has already set in.
- But if a notice under section 148 has to be issued on or after 01-04-2021, the amended provisions should be complied with.
- No notice under section 148 can be issued after 01-04-2021 on the basis of old law.

Reassessment - Notice issued prior to 31-03-2021

Points for discussion:

- The CBDT interprets the Supreme Court Judgement that the direction given by the Supreme Court to treat the notice issued under unamended section 148 as a notice under section 148A(b)
- as a license to issue notices under section 148 of the new Act without satisfying the provisions of the amended law.
- This is evident from the observations in the last bullet point of para 6.1 of the circular which states that the decision of the Supreme Court read with time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original due date and then new section 149 of the Act is to be applied at that point.

Reassessment - Notice issued prior to 31-03-2021

<u>Points for discussion:</u>

- Prima Facie the interpretation played by the board is wrong.

THANK YOU