

Judicial Decisions

Bar on recovery of tax from deductee on account of non-deposit of tax by the deductor

Chandrashekhar Sadashiv Photphode v. DCIT [2023] 147 taxmann.com 260 (Pune-Tribunal)/ Sanjay Sudan v. ACIT [2023] 148 taxmann.com 329 (Delhi HC)

In favour of Assessee

Relevant facts

The assessee, an employee, filed his return for relevant year declaring net salary income received from his employer with a corresponding claim of TDS under section 192. The employer failed to deposit the TDS to the credit of the Government. The return of income of the assessee was summarily processed by the Centralised Processing Centre, Bengaluru (CPC) under section 143(1) of the Act and TDS credit was denied as the same was not reflected in Form 26AS of the assessee.

The denial of TDS credit was challenged by the assessee with the CIT(A), who, in absence of proof of deduction, confirmed the denial of

credit.

Held

The Tribunal held that once the tax liability of the assessee is discharged by the indirect method of collection of tax i.e., by way of TDS, the rule of Estoppel gets attracted, which restricts the Assessing Officer (AO) from enforcing the recovery of taxes from the assessee where the tax has been deducted from the payment made to the assessee. Therefore, the powers of the AO pertaining to recovery of taxes in cases, where tax has been deducted from the income of the assessee, are restricted to the deductor/ employer, and not to the deductee/employee.

CNK comments

The above ruling would help taxpayers to stay recovery of proceedings by tax authorities in situations where the income received has been subject to TDS, but such TDS is not deposited with the government by the deductor. However, it is important to obtain and maintain documentation to substantiate that tax has been deducted.

Condition under section 54F for not owning more than 2 residential houses applies only in respect of properties in INDIA

Smt. Maries Joseph vs. DCIT [2023] 148 taxmann.com 97 (Cochin - Trib.)
In favour of assessee

Relevant Facts

The assessee, a non-resident, sold land in India which was jointly owned by her with her husband, and invested sale proceeds in a residential house property situated in India and claimed exemption under section 54F. As the assessee already owned jointly 2 residential properties in USA at the time of sale, the AO denied the exemption under section 54F. This was upheld by CIT(A).

Held

The Tribunal held that a proviso to a section ought to be construed harmoniously with the section itself. Where section 54F provides for investment to be made in the purchase or construction of one 'residential house property in India', the proviso to section 54F(1) which provides that the assessee should not be owning more than one 'residential house property' should be interpreted as 'residential house property in India'. It thus follows that the existing ownership of 2 residential house properties in USA could not be held as the basis on which an exemption could be denied to the assessee especially when all other conditions stipulated in the section had been duly complied with.

CNK comments

The above ruling provides clarity around the controversy regarding whether ownership of more than one residential house properties outside India would affect the claim of exemption under section 54F.

Denial of exemption under section 54F if assessee is unable to prove that house properties held by him were used for commercial purpose and not residential purpose

Surendra Babu Sabbineni vs. DCIT [2023] 147 taxmann.com 560 (Hyderabad - Trib.)
In favour of revenue

Relevant Facts

The assessee claimed an exemption under section 54F in respect of capital gains earned on transfer of a capital asset. The AO noted one of the requirements of claiming the said exemption, being that the assessee should not be the owner of more than 1 residential house property. It was noticed by the AO that the assessee was the owner of a total of 7 properties as on the date of claiming the exemption. 5 of these 7 properties appeared to be residential units while the other 2 were a vacant site and an industrial property. Income from these 5 properties were offered to tax as house property income.

Held

The ITAT held that the onus to prove that the 5 properties owned by the assessee were used for commercial purposes and not for residential purposes lies with the assessee and not with the department.

The flats were situated in residential societies and the assessee was unable to conclusively prove that they were being used for commercial purposes. Further, the taxes being levied by the Municipal Authorities and the charges of the Electricity Department in relation to these properties were not in line with what is charged for commercial properties. Bearing these facts in mind, the Tribunal concluded that in the absence of conclusive proof about the properties being commercial in nature, it could be concluded that they were, in fact, residential in nature.

Notifications

Provisional Cost Inflation Index notified

[Notification 21 of 2023 dated 10 April 2023](#)

Provisional Cost Inflation Index for Financial Year 2023-24 i.e., Assessment Year 2024-25 has been notified as 348 for the purpose of computation of Long-term Capital Gains.

Circulars

Extension for linking PAN with Aadhaar

[Circular No. 3 of 2023 \[F.No. 370142/14/2022-TPL\] dated 28 March 2023](#)

The due date for linking PAN with Aadhaar by the taxpayers has been extended from 31st March 2023 to 30th June 2023. If the Aadhaar-PAN linking is pending beyond the said date, the PAN will become inoperative, and the taxpayer shall not be entitled to the refund due to him.

Press Release

'AIS for Taxpayer' Mobile Application

[Press Release dated 22 March 2023](#)

The Income-tax Department has launched the 'AIS for Taxpayer' mobile app which will facilitate the taxpayers to view the information available in their Annual Information Statement (AIS)/Taxpayer Information Summary (TIS) such as information related to TDS/TCS, interest, dividends, share transactions, tax payments, Income Tax refunds and Other Information (GST Data, Foreign Remittances, etc.).

To access this mobile app, the taxpayer needs to register on the app by providing PAN number, authenticate with the OTP sent on mobile number & e-mail registered on the e-filing portal. Subsequent to the authentication, the taxpayer can simply set a 4-digit PIN to access the mobile app.

Amendments to Finance Bill 2023

The Finance Bill, 2023 was passed by the Lok Sabha and Rajya Sabha on 24th March 2023 and received President's assent on 31st March 2023. While passing the Finance Bill, 2023, some significant changes were made to the original proposals in the Bill. These are:

- **Gains on sale of debt mutual funds to be taxed as short-term capital gains**

Presently, gains arising from the redemption of units of certain mutual funds (i.e., which invest not more than 35% of proceeds in equity shares of domestic companies) are classified as long-term capital gains if the units are held for more than 36 months. The Finance Act, 2023 has now provided that such gains in respect of units acquired on or after 1st April 2023 would be taxed as short-term capital gains irrespective of the period of holding of the units.

CNK Comments

This amendment would apply not only to debt-mutual funds but also international equity funds as well as Exchange Traded Funds (ETFs). As the gains arising would be considered as short-term capital gains, the benefit of indexation would not be available. Further, there is ambiguity in the tax rate applicable on gains arising on sale of units of Fund of Funds where the underlying funds have invested more than 65% in the equity shares of domestic companies.

- **Distribution of income by Real estate investment trusts (REITs) and Infrastructure Investment Trust (InvITs)**

The Finance Bill 2023, when presented, had proposed to tax sum received by a unitholder from a REIT or InvIT, being in the nature of repayment of debt or redemption of units as income from other sources. Further, the Finance Bill, 2023 had also provided that in the case of redemption of units, the cost of acquisition would be allowed to be deducted

April 2023

from the amount received by the unitholder.

The Finance Act, 2023 has now modified the computation mechanism in respect of such income. It now provides that any sum distributed by the REIT/InvIT to a unitholder to the extent such sum (specified sum other than dividend, interest, rent or any other income taxable in the hands of the REIT/InvIT) exceeds the issue price of the units as well as amount previously taxed as income from income from other sources, shall be taxable in the hands of the unitholder. For computing the specified sum chargeable to tax, one would need to include all the distributions in respect of the said unit, other than dividend, interest, rent or income taxable in hands of REIT/InvIT, to the unitholders during the previous year as well as in the past.

Further, any specified sum not taxable under the mechanism above (say in a scenario where the amount distributed is lower than the issue price of the units) would be reduced from the cost of acquisition of such units at the time of transfer of such units by the unitholder. This adjustment would be made in the hands of the new holder of units if the acquisition of units from the earlier unitholder was not a taxable transfer.

CNK Comments

Redemption of units of REITs and InvITs would now be taxable as income from other sources instead of capital gains. Further, while the Finance Bill, 2023 allowed for reduction of cost of acquisition of the units in the hands of the unitholder, the Finance Act, 2023 only allows reduction of the issue price of such units. This would be disadvantageous to unitholders who have acquired the units in a secondary market transaction. Moreover, while the provisions are applicable from AY 2023-24, there is ambiguity as to whether the sums received from such units before 1st April 2023 could be taxed under the new provisions.

■ Marginal relief for resident individuals opting for new tax regime

The Finance Bill, 2023 had proposed a rebate of up to INR 25,000 to resident individuals opting for taxation under the new tax regime and having total taxable income not exceeding INR 7 lakh.

In addition to the above, the Finance Act, 2023 has extended the rebate to individuals opting for new tax regime even if the income exceeds INR 7 lakh to the extent of tax payable in excess of the amount of income exceeding INR 7 lakh.

■ Increase in tax rates on royalty and FTS earned by non-residents

The Finance Act, 2023 has increased the rate under the domestic provisions in respect of royalty and fees for technical services in the hands of a non-resident or a foreign company to 20% (plus applicable surcharge and education cess) from 10% (plus applicable surcharge and education cess).

■ TDS provision on winnings from online games to be effective from 1st April 2023

The Finance Bill 2023 had proposed to insert a new section to tax winning from online games from 1st April 2023. Further, the TDS provisions in respect of such winnings were proposed to be effective from 1st July 2023.

The Finance Act, 2023 has made the TDS provisions on winning from online games to be effective from 1st April 2023. Moreover, the provisions in the Act which apply a higher rate of TDS in case the recipient has not filed the return of income, would not apply to the TDS from such winnings.

■ TCS on Liberalised Remittance Scheme (LRS)

The Finance Bill, 2023 increased the rate of Tax Collected at Source (TCS) on overseas remittance under LRS to 20% if such remittance was not for educational or medical

purposes. The Finance Act, 2023 has now provided that such higher rate of TCS would apply even to remittances within India, if the same is made under the LRS scheme. Moreover, the Finance Act, 2023 has also provided that the rate of TCS would not exceed 20% even in the absence of PAN.

CNK Comments

Remittances under LRS to GIFT City would also be subject to TCS at the rate of 20%. Similarly, amounts remitted by residents to NRO accounts of NRI in India would also now be subject to TCS.

▪ **International Financial Services Centre (IFSC) related amendments**

The Finance Act, 2023 introduced the following amendments in respect of IFSC in addition to the amendments proposed in the Finance Bill, 2023:

- a. Dividends paid to a non-resident or foreign company by a unit of IFSC to be taxable under the domestic tax provisions at the rate of 10% instead of 20%;
- b. Dividend paid, by a company which is an IFSC unit and engaged in the aircraft leasing business to another company which is also an IFSC unit and engaged in the aircraft leasing business to be exempt;
- c. Capital gains arising to a non-resident or a unit of IFSC engaged in aircraft leasing from transfer of equity shares of a company, which is a unit of IFSC and engaged in aircraft leasing, to be exempt subject to certain conditions; and
- d. Interest earned by a non-resident in respect of long-term bond or rupee denominated bond issued after 1st July 2023 and listed on a recognized stock exchange in IFSC to be taxed at 9%.

KEY TAKE AWAYS

- In cases where tax has been deducted from the income of an assessee but not deposited by the deductor, the AO can recover the taxes only from the deductor/employer, and not to the deductee/employee
- In order to claim exemption under section 54F, an assessee should not own more than one residential house property in India and residential properties held outside India are not to be considered
- Provisional CII for AY 2024-25 is notified as 348
- Due date for linking PAN with Aadhaar extended to 30th June 2023
- Amendments have been made in the Finance Bill 2023 with respect to-
 1. Gains on sale of units of debt mutual funds now taxed as short-term capital gains irrespective of period of holding
 2. Taxation of distribution of income by REITs and InvITs amended
 3. Marginal relief for resident individuals opting for new tax regime extended to certain taxpayers having income in excess of INR 7 lakh
 4. Royalty and Fees for technical services paid to non-residents now taxable at 20% ++
 5. TDS provision on winnings from online games to be applicable from 1st April 2023
 6. TCS on LRS applicable for remittances within India as well



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