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CHARTERED ACCOUNTANTS

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Domestic Tax – Circulars/Notifications & Judicial Decisions

Circulars/Notifications

Computation of Capital Gains on amount received under a unit – linked insurance policy (ULIP) under Section 45(IB) of the Act read with Rule 8AD

Notification No. 08/2022 dated 18th January 2022

The Finance Act, 2021 had amended the provisions to tax the proceeds received (including amount allocated by way of bonus) from ULIPs issued on or after 1 February 2021, where the aggregate annual premium in any financial year exceeds Rs. 2,50,000 as Capital Gains in the hands of the recipient in the year of receipt. The CBDT, has inserted a new Rule 8AD for the purpose of computing such capital gains.

Method to compute the capital gains

1. Amounts received under ULIP for the first time:
   In case a taxpayer receives any amount for the first time under a specified ULIP, including amount allocated as bonus on such policy at any time during a particular tax year, then the capital gains arising from receipt of such amount shall be calculated as the difference between the amount received and the aggregate of the premium paid during the term of the specified unit linked insurance policy till the date of receipt of the amount.

2. Amounts received under ULIP during a tax year after the receipt of amount for the first time (as mentioned above in point 1):
   In case a taxpayer receives any amount under a specified ULIP, at any time after the receipt of the amount as mentioned in point 1 above, then the capital gains arising from receipt of such amount shall be calculated as the difference between the amount received (as reduced by the amount already considered in point 1 above) and the aggregate amount of premium paid during the term of the specified ULIP (as reduced by the amount already considered in point 1 above).

   It has also been clarified that such capital gains shall be deemed to be arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

Clarification with respect to relaxation of certain penal provisions for PAN not linked to Aadhaar

Circular No.7 of 2022 dated 30th March 2022

In order to mitigate the inconvenience to taxpayers, a window of opportunity has been provided to taxpayers up to 31st March 2023, to link their Aadhaar and PAN without the PAN becoming inoperative. Therefore, for taxpayers who have not yet linked their PAN and Aadhaar, the PAN will continue to be functional for the procedures under the Act, like furnishing of return of income, processing of refunds etc. till 31st March 2023.

However, taxpayers will be required to pay a fee of Rs. 500 up to 3 months from 1st April 2022 and a fee of Rs.1000 after that, while intimating their Aadhaar.

- PAN, not linked to Aadhaar, would become "inoperative" after 31st March 2023.
- Further, CBDT has clarified that once the PAN of a person becomes inoperative, he will not be able to furnish, intimate, or quote his PAN and shall be liable to all the consequences under the Act for such failure such as:
  i. The person shall not be able to file a return using the inoperative PAN
  ii. Pending returns will not be processed
  iii. Pending refunds cannot be issued to inoperative PANs
  iv. Pending proceedings cannot be completed once the PAN is inoperative
  v. Tax will be required to be deducted at a higher rate from the income payable to the holder of an inoperative PAN
- The taxpayer might face difficulty at various other fora like banks and other financial portals, as PAN is one of the important KYC criteria for all kinds of financial transactions.

Judicial Decisions

Kerala HC directs National Faceless Appeal Centre ('NFAC') to provide link for uploading stay petition in case of assessee's inability to upload stay petition. Stays recovery till expeditious disposal of stay petition

Mohamed Jazeel PA vs ITO, CIT(A), NFAC and others [TS-245-HC-2022(KER)]

Relevant Facts

The assessee preferred an appeal before the CIT(A) against the assessment order passed by the ITO. The said appeal was thereafter transmitted to the NFAC, which was pending for consideration. In the meantime, the ITO initiated recovery proceedings. The stay petition was filed by the assessee before the CIT(A). However, the said stay petition filed before the CIT(A) could not be uploaded before the NFAC.

Held

NFAC was directed to provide links to the assessee within 4 weeks from the date of this order. On receipt of such a link, the assessee was required to upload the stay petition within a period of 2 weeks. The NFAC was directed to consider the said stay petition, within period of 4 weeks from the date of uploading of the said stay petition.

Stay was granted against all coercive proceedings until the disposal of the stay petition.

Assessee can be treated as 'assessee-in-default' under section 201 for non-deduction of TDS despite suo-motu disallowance of expenses under section 40(a)(i)/(ia)

Biocon Ltd. vs DCIT [TS-216-ITAT-2022(Bang)]

Relevant Facts

The assessee was engaged in the business of manufacture and sale/licensing of active

pharmaceutical ingredients. The assessee voluntarily disallowed certain year-end provisions under sections 40(a)(i) and 40(a)(ia) of the Act, for non-deduction of TDS. The same was also disclosed this in the Tax Audit Report. The AO initiated proceedings under section 201(1) of the Act, treating the assessee as an 'assessee-in-default' for non-deduction of TDS. Demand was raised on the assessee equal to the amount of TDS and interest under section 201(1A) was levied up to the date of order.

The assessee argued that the year-end provisions were made as per the mandate of Accounting Standards on an estimated basis, and they are credited to "Provision for expenses" account and not to the vendors/service providers' account, as the vendors were not specifically identifiable at that point. The assessee had deducted TDS at the time of accounting of invoices/payments i.e., in the succeeding year.

Held

Even year-end provisions are credited to any account, whether 'Suspense Account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such account to the account of the payee and the provisions of TDS shall apply accordingly.

Suo-motu disallowance under section 40(a)(i)/(ia) does not exonerate the assessee from the liability under section 201. The assessee to be considered as an assessee-in-default for non-deduction of tax on year end provisions.

In such a scenario, the entire TDS cannot be recovered from the deductor and only the interest liability will arise. Interest liability would arise from date of provision till the date of deduction. Where one can substantiate that the payee is not known at the time of making the provision, one cannot undertake TDS compliance and in such a scenario, the payer will not be considered as an 'assessee-in-default'.

CNK Comments

TDS is to be deducted on year end provisions irrespective of whether the same is reversed in the succeeding year. Incase TDS is not deducted , the assessee is considered to be "assessee- in- default" and is subject to TDS recovery proceedings and/or interest u/s 201/201A would be levied even when disallowance is made u/s 40(a)(i)/ (ia).

KEY TAKE AWAY

- Sum received under a ULIP, in respect of which the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured, is tax-exempt.
- For ULIP issued on, or after 1.02.2021, if the amount of premium payable for any of the years during the term of the policy exceeds Rs. 250,000, then proceeds from such ULIP/ ULIPs would be subjected to tax at rates similar to equity-oriented funds (i.e., Short Term @ 15% u/s 111A and Long Term @10% u/s 112A).
- PAN, which is not linked with Aadhaar, will continue to be operative for the period 01.4.2022 to 31.03.2023 and can be linked with Aadhar after payment of prescribed fees up to 31.03.2023. The PAN will become inoperative if the same is not linked to Aadhaar by 31.03.2023.
- The Kerala HC directs NFAC to provide link for uploading stay petition, expeditious disposal; Stays recovery
- The Bangalore Tribunal held that suo motu disallowance under section 40(a)(i)/(ia) does not exonerate the assessee from the liability under section 201/ 201(1A)and held assessee to be 'assessee-in-default' for non- deduction of tax on year end provisions where the payee is known.

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