

Domestic Taxation

INDEX

<u>Particulars</u>	<u>Page No</u>
Judicial Decisions	2
Circulars	4

Judicial Decisions

Taxpayer to receive timely refund with interest despite technical issues in the system of the Income tax Department

Matrix Publicities and Media India (P.) Ltd. vs. DCIT (155 taxmann.com 588) (Bombay High Court)
In favour of assessee

Facts

The assessee was eligible for refund along with interest upto the date of payment of refund. However, such refund was not released to the assessee due to system issues arising at the Centralised Processing Centre (CPC) of the income-tax department.

While the tax officers requested for time to resolve the system issues, the assessee filed a writ petition before the High Court.

Held

The High Court ordered the tax department to pay the refund with interest (up to the date of refund) to the assessee within 10 days from the order date and refused to accept the excuse of technical system issues given by the department.

CNK comments:

While the law provides for timely issue of refunds, receiving refunds at times has been challenging. One hopes that the Department is able to implement the High Court order at the ground level and ensure that refunds due are issued in a timely manner.

Determining due date for deposit of employees' contribution to PF/ESIC while evaluating delay in deposit

Denial of deduction of additional employees' cost due to late filing of form is not justified

Sai Computers Ltd. vs. ADIT (155 taxmann.com 607) (Delhi – Trib.)
In favour of assessee

Facts

Following the recent Supreme Court decision on taxability of income in case of delay in deposit of employees' contribution of PF/ESIC, the AO sought to add to the income, the contribution which was allegedly delayed.

Further, the AO disallowed deduction for additional employees' cost as the tax audit report as well as the relevant form for claiming the deduction was filed after the due date of filing the return of income.

Held

The ITAT held that the decision of the Supreme Court, wherein it was held that delay in deposit of employees' contribution of PF/ESIC would result in addition to the income of the employer even if paid within the due date of the income tax return, would apply. Following another similar ruling of the same bench, the ITAT however, held that the due date for deposit of the contribution would be reckoned from the end of the month in which the disbursement of salary was actually made in accordance with the relevant laws. Therefore, the matter was remanded back to the AO to determine the actual due date for the contribution and if there was any delay in deposit.

Further, the ITAT held that so long as the tax audit report was revised to reflect the deduction and the form was filed before the processing of the return by the CPC, the CPC could not deny the deduction merely because the form was filed after the due date of the return. The ITAT also held that the requirement to file the form is directory in nature and is not mandatory.

CNK comments:

The above decision would help in determining the actual due date for the deposit to evaluate whether there is any delay in the deposit of the contribution.

Consideration towards negative covenants to be segregated from consideration towards transfer of shares and to be taxed as business income of the seller

Jayant Avinash Dave vs. DCIT (156 taxmann.com 458) (Pune – Trib.)

Partly in favour of revenue and partly in favour of assessee

Facts

The assessee individual, who held 51% of the shares of an Indian company, transferred his entire shareholding during the year and offered the income arising from the transfer as long term capital gains. The AO sought to tax the entire consideration received as that received towards not undertaking a certain business activity and therefore, taxable as business income.

Held

On perusal of the Share Sale and Purchase Agreement (SSPA) entered into for the sale of shares held by the assessee, the ITAT observed that in addition to the sale of shares, the seller assessee had also agreed to certain negative covenants, namely:

- Confidentiality clause wherein the seller shall not disclose any information about the Company as well as the transaction to third parties for a particular period;
- Non-compete clause wherein the seller shall not own, manage, operate, control or assist any person or participate in ownership, management, operation or control of any restricted specified business for a particular period;
- Non solicitation clause wherein the seller shall not solicit existing employees or consultants of the company for a particular period;
- Non-interference clause wherein the seller shall not interfere with any existing customer or

supplier relationship of the company for a particular period.

The ITAT held that while the consideration as per the agreement only referred to consideration for the sale of shares, given the indemnity clauses in the agreement for the breach of the above covenants, part of the consideration was also towards the above negative covenants.

Therefore, to the extent the consideration for the negative covenants were in relation to not carrying out any activity (such as non-compete, non-solicitation and non-interference) or not sharing any know-how, information, etc. (such as confidentiality), such consideration was taxable as business income.

The AO was directed to compute the value attributable to each of the covenants and tax such income as business income and the balance as long-term capital gains.

CNK comments:

This is an important ruling as most SSPAs contain such negative covenants and one may need to consider bifurcating the consideration towards these negative covenants in the agreement itself, to avoid any arbitrary attribution being undertaken by the tax authorities.

Depreciation in the hands of merged company in case of goodwill arising on merger

S&P Capital IQ (India) (P.) Ltd. vs. ACIT (158 taxmann.com 12) (Hyderabad – Trib.)

In favour of assessee

Facts

The assessee acquired 100% shareholding of an Indian company from the existing shareholders and the excess of purchase consideration over the net assets was recorded as goodwill in the consolidated financials (not in standalone financials). Further, the said company was merged with the assessee and the difference

between the purchase consideration paid for the shares and the net assets acquired was shown as 'goodwill' arising on merger in accordance with Ind-AS.

The assessee claimed depreciation on the said goodwill. The AO disallowed the same and relied on section 43(1) and section 43(6) of the Act, which provides that in case of an amalgamation, the cost of depreciable asset and the written down value of an asset which has been transferred from the amalgamating company, shall be the cost of acquisition and the written down value in the amalgamated company.

Held

The provisions of section 43(1) and 43(6) as explained above, apply only in case an existing block of assets of the amalgamating company is transferred to the amalgamated company and not in case of an asset which comes into existence on account of the excess consideration actually paid by the assessee.

CNK comments:

This is an important ruling in the case of mergers and acquisitions. While one would rely on the decision of the Hon'ble Supreme Court in the case of Smifs Securities to claim that goodwill is a depreciable asset (prior to amendment effective from 1st April 2020), this decision of the ITAT reiterates that the decision of the Supreme Court cannot be distinguished by applying sections 43(1) and 43(6) to deny the claim of depreciation. Further, while the Act has been amended to disallow depreciation on goodwill, one may be able to apply the principle emanating from the decision in case of other identifiable intangibles which have been accounted after the merger due to excess purchase consideration actually paid.

Circulars

Guidelines for tax to be deducted by e-commerce operators

[Circular No. 20/2023 dated 28.12.2023](#)

Finance Act, 2020 introduced section 194-O for TDS to be deducted at the rate of 1% on the gross amount of sales/services by the e-commerce operators (**ECO**) on amounts received by e-commerce participants from 1st October 2020.

In order to provide clarifications on some issues faced in the implementation of the provisions, the CBDT issued guidelines in September 2020 and November 2021. In light of representations received, some further guidelines have been issued, which have been summarized below:

- In case of ECO on the seller side and buyer side, the TDS compliance is to be undertaken by the seller side ECO on the gross amount of the transaction.
- TDS to be deducted on the entire value of the invoice raised including charges such as packing fees, shipping fees, convenience charges, etc. The amount subject to TDS would include facilitation charges as well unless they are paid on a lump-sum basis and not linked to any specific transaction.
- Other TDS provisions such as TDS on commission payable by the buyer/seller to the ECO shall not apply once TDS is applicable under section 194-O.
- If GST is charged separately in the invoice by the e-commerce participant seller, no TDS to be deducted on the GST component. However, in case of TDS deduction on payment basis (where payment is earlier than credit), TDS to be deducted on the entire amount received.
- In case of goods returned, the excess TDS deducted can be adjusted against a subsequent transaction.
- In case of seller discount, TDS to be deducted on the final invoice value (after discount) but in case of buyer discount, TDS to be deducted on entire amount received/ receivable by the seller.



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www.cnkindia.com

CNK & Associates LLP
Chartered Accountants

Mumbai

3rd Floor, Mistry Bhavan, Dinshaw Vachha
Road, Churchgate, Mumbai 400 020.

Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G Road,
Vile Parle (East), Mumbai 400 057.

Tel: +91 22 6250 7600

Chennai: +91 44 4384 9695

GIFT City: +91 79 2630 6530

Pune: +91 20 2998 0865

Vadodara: +91 265 234 3483

Bengaluru: +91 91 4110 7765

Dubai: +971 4355 9533

Ahmedabad: +91 79 2630 6530

Delhi: +91 11 2735 7350

Abu Dhabi: +971 4355 9544