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Tax Digest

- **Recent case laws**

December 20, 2022

WORLD TAX NEWS: UAE releases norms to determine **Tax Residency** - Federal Tax Authority of the United Arab Emirates (UAE) has released Cabinet Resolution No. (85) of 2022, stating the conditions for determining tax residency in the UAE, effective from March, 2023.

SEARCH AND SEIZURE OPERATIONS IN KARNATAKA:

Tax dept. conducted searches on individuals who executed Joint Development Agreements (JDAs) - Detects unaccounted income of more than Rs. 1,300 crores.

Direct Tax Updates

UAE RELEASES NORMS TO DETERMINE TAX RESIDENCY :

The Federal Tax Authority of the United Arab Emirates (UAE) has released *Cabinet Resolution No. (85) of 2022*, stating the conditions for determining tax residency in the UAE. Earlier, there were no specific provisions for determining the residential status of natural and legal persons. The resolution is said to be effective from 1st March 2023.

(a) Juridical Person :

A juridical person (entity or establishment) shall be considered a Tax Resident in the UAE if any of the following conditions are satisfied:

- It was incorporated, formed, or recognized as per UAE laws. However, it does not include a branch registered in UAE by a foreign juridical person.
- It is considered a Tax Resident in accordance with the Income-tax Law in force in the UAE.

(b) Natural Person

A natural person (individual) shall be considered a Tax Resident in the UAE if any of the following conditions are satisfied:

- His primary principal place of residence and the centre of financial and personal interests are in UAE, or he meets the conditions and criteria as specified by the minister;
- He has been physically present in the UAE for 183 days or more in the relevant 12 months period; or
- He has been physically present in the UAE for 90 days or more in the relevant 12 months period, and he is a UAE National and holding a valid Residence Permit or holding the nationality of any member state of the Gulf Cooperation Council and
  - He has a Permanent Place of Residence in the State; or
  - He carries on employment or business in the State.

A person who is considered a Tax Resident in the UAE in accordance with the above norms may make an application to the authority to issue a Tax Residency Certificate (TRC).

Source : Cabinet Resolution No. (85) of 2022

1. When assessee itself could not deposit more than Rs.50,000/- in its bank account as per notification, then a third party could also not be authorized to deposit more than specified limits in bank account of assessee; and disability of assessee would entail disability of its delegate / agent, thus, impugned addition made on account of said amount received in bank account of assessee after demonitisation was justified

In the instant case[1], the assessee is a private limited company engaged in the business of trading in gold, diamond jewellery and bullion. In this case, a search and survey action u/s 133A of the Act was carried out in the business premises of the assessee on 01.12.2016 by the Investigating Wing, Hyderabad. During the survey, it was noticed that assessee had deposited Rs. 40.14 crores in its Bank account out of which a certain portion was deposited by a third party.

The case was selected for scrutiny thereafter and the Ld AO made addition u/s 68 of the Act for the cash deposits received.

[1] **Vaishnavi Bullion (P.) Ltd vs. ACIT (ITAT Hyderabad) [2022]**

Aggrieved, the assessee preferred an appeal before the CIT(Appeals) who granted relief by deleting the addition on the ground that the said deposit by the third party of money was towards a business transaction.

The Revenue stood before the Hon'ble ITAT in appeal stating that the Ld. CIT(A) erred in disregarding the fact that acceptance of cash in SBNs and purchase of bullion with such 'ceased legal tender' cannot be treated as a legal business transaction in view of the special circumstances prevalent after announcement of demonetization, even if the deposit was not directly made by the assessee. The Hon'ble Court observed and held that when the assessee itself could not deposit more than Rs.50,000/- in its bank account as per RBI notification, then a third party could also not be authorized to deposit more than the specified limits in the bank account of the assessee, and the disability of the assessee would entail disability of its delegate / agent, and thus, the impugned addition made on account of said amount received in bank account of assessee after demonitisation was justified.

2. Section 44AD :

AO can't apply Sec. 44AD if turnover exceeds threshold limit - ITAT upheld 4% net profit of civil contractor

In the instant case[2], the assessee is a civil contractor who worked for State P.W.D. (Departments), especially in road construction and was said to be procuring work through tender process in a competitive environment. All the payments were received from various State Government departments and hence readily available in Form 26AS. However, the assessee did not get his accounts audited and had furnished income at 3% of turnover, based on estimates as per practice followed since last many years.

However, as the assessee did not maintain accounts and income was determined only on estimate basis, as had been done in the last few years, and that the assessee should have made and kept accounting records, as required, the Assessing Officer determined income on an estimate at 8% under section 44AD of the Act.

On appeal, by considering earlier years, the ld. CIT(A) restricted the net profit margin at 6% with depreciation or 4% without depreciation as against 3% declared by the assessee

Aggrieved, the Revenue was in appeal before the Hon'ble Tribunal.

It was observed by the Hon'ble Tribunal that where the assessee's civil contractor's turnover from PWD contracts was a huge Rs. 74 crores and this entire turnover was reflected in Form 26AS and had been subjected to TDS, and assessee had not maintained books of account and had not got them audited and had offered to tax at 3% on turnover as business income on estimated basis, AO was not justified in making additions by determining income on an estimate at 8% under section 44AD of the Act and assessing business income at 8% when these contracts were secured in a very competitive environment, turnover was huge, and in the past Department had accepted 3%/3,5%/4% of turnover on estimated basis as income u/s 143(3) in the past 4 assessment years. Hence, it was held that the CIT(A) was justified in limiting additions by applying 4% of turnover as profits of the assessee.

3. Section 129 : Change in jurisdiction

In case of change of Assessing Officer, the newly appointed AO shall continue the proceedings from the stage where they were left at by the earlier AO

[2] **Deputy Commissioner of Income-tax, Circle, Trichy Vs Srinivasan Devendran (ITAT Chennai) [2022]**

In the instant case[3], M/s Mastech Technologies Pvt. Ltd. ("the Respondent") filed return of income for Assessment Year 2008-09 declaring loss. In march 2015, the AO issued notice ("First Notice") for reassessment under Section 148 of the Income Tax Act, 1961 ("the Income Tax Act"). However, due to transfer of the AO, the case was assigned to the new AO. Subsequently, the new AO again issued notice ("Second Notice") under Section 148 of the Income Tax Act in January 2016. The Respondent submitted its objection against re-opening the assessment vide letter dated March 07, 2016. However, the AO rejected the objection of the Respondent and vide Order dated on March 30, 2016 ("the Order"), passed an Order directing the Respondent to deposit additional tax under Section 143(3) of the Income Tax Act.

The Respondent filed a writ petition before the Hon'ble Delhi High Court challenging the Order. The Delhi High Court vide judgement and order quashed the re-opening of the assessment and also set aside the assessment order passed by the AO for the Assessment Year 2008-09 on the ground that issuance of the Second Notice under Section 148 would result into dropping of the First Notice. Consequently, the Second Notice issued by the AO dated January 2016 would be considered as fresh notice which was barred by limitation. Further, no reasons were recorded when the Second Notice was issued as to whether the Second Notice was issued in continuation of the First Notice.

Aggrieved with the order passed by the Delhi High Court, the Department filed a Civil Appeal before the Hon'ble Supreme Court contending that order of quashing the assessment passed by the High Court was not correct.

The issue which arose was : "*Whether in case where an AO is transferred and new AO takes charge, a fresh Notice is required to be issued or new AO can continue the proceedings from the stage where earlier AO left"?*

The Hon'ble Supreme Court held that:
Section 129 of the Income Tax Act permits to continue the earlier proceeding in case of change of the AO from the stage at which the proceeding were before the earlier AO. The Second Notice issued by the AO was not required by law. However, the Second Notice could not be said to drop the First Notice. The reason to re-open the assessment was already furnished after the First Notice. Further, it was to be noted that assessment order was passed on the basis of First Notice and not on the basis of the Second Notice. Therefore, the Supreme Court held that the Delhi High Court Order of quashing and setting aside the re-opening of the assessment was unsustainable.

4. Section 37(1) :

Where non-convertible debentures issued by assessee were redeemable at premium after seven years, assessee-company would be entitled to deduction claimed under section 37(1) on account of premium paid on proportionate basis on redemption of non-convertible debentures (NCD) as liability to pay premium arose in year in which NCDs were issued and same could be proportionately spread over period prescribed for maturity of same

In the instant case[4], the assessee is a company, and during the F.Y. 2012-13, it had issued 750

[3] **DCIT Vs Mastech Technologies Pvt. Ltd. (Supreme Court of India) [2022]**

[4] **ACIT v. Cleta Real Estate (P) Ltd (ITAT Delhi) [2022]**

non-convertible debentures (NCDs) of face value of Rs. 10 lacs each aggregating to Rs. 75 crores redeemable after five years at a premium of Rs. 7,23,870/- per debenture, giving an implicit return of 11.5%.

In such manner, the redemption price of the debentures comes to Rs. 17,23,870/-. It was further observed by the Assessing Officer that during the F.Y. 2013-14, the assessee has issued 860 non-convertible debentures of face value of Rs. 10 lacs each, aggregating to Rs. 86 crores which were redeemable after seven years at a premium of Rs. 10,77,342/- per debenture giving an implicit return of 11%.

Accordingly, the assessee claimed a total amount of Rs. 20,73,77,111/- on account of provision for payment of premium on redemption of these debentures for the F.Y. 2014-15 which is debited in the profit & loss account of the assessee.

The case was selected for scrutiny, the Assessing Officer treated the said premium as future expenditure, provisional in nature, and disallowed the same.

On being asked to justify why the premium payable on redemption of debentures may not be disallowed, the assessee submitted that being a corporate assessee, the assessee is required to maintain its accounts on mercantile/accrual basis and accordingly, a sum of Rs. 20,73,77,111/- being the proportionate amount of premium accrued for the year, has been booked under the head 'premium on redemption of debentures under Finance Expenses'. The assessee further claimed that by utilizing the money received on issuance of debentures, the assessee has earned taxable interest income amounting to Rs. 20,76,47,522/- in the year under consideration. In such manner, the incurrence of expenses is duly relatable with the earning of income. The assessee further claimed that computation of income under the head '*business or profession'* need to be computed in accordance with the method of accounting employed regularly. The amount of premium on debentures is nothing but interest. The said premium/interest is duly allowable u/s. 36(1)(iii) of the Act. Without prejudice, the said premium is duly allowable as business expenditure u/s. 37 of the Act. At last, the assessee claimed that the assessee has been following the mercantile/accrual basis and accordingly, the sum of Rs. 20,73,77,111/- being the proportionate amount of premium accrued for the year, has been booked under the head ' premium on redemption of debentures under Finance Expenses.

The Ld CIT(A) deleted the addition, following which the Revenue was in appeal before the Hon'ble ITAT.

The Hon'ble ITAT conduced that the issue under consideration had already been decided by the co-ordinate bench in the assessee's own case, wherein it was held that the moment the debentures were issued, the liability had arisen against the assessee which would constitute on expenditure allowable under section 37 of the Act.

Repelling the contention that the liability cannot be spread over the number of years for which the debentures were issued, their lordship observed that the facts may justify the spreading of the liability over the ensuing years. Allowance of the entire expenditure in one year, observed their Lordship, might give a very distorted picture of the profits of a particular year.

What is important is that the liability to pay premium arises in the year in which the debentures were issued and could be proportionately spread over the period prescribed for maturity of such debentures. It matters little whether the debentures were redeemable at will or only upon maturity.

This view hasd been reiterated by different High Courts in the following cases:

a. *Madras Industrial Investment Corporation Ltd.v. Commissioner of Income-tax (supra).*
b. *CITv. First Leasing Company of India* Ltd*. (Madras High Court)*
c. *National Engg. Industries* Ltd*.v. CIT (cal.) 236 ITR 577*
d. *CITv. Tube Investments (India)* Ltd*. 261 ITR 753 (Mad.)*

Hence, the quantum of premium was allowed.