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Tax Digest

- **Recent case laws**

January 9, 2024

Over 8.18 Crore ITR Filed for AY 2023-24, Marking a 9% Rise From AY 2022-23 | CBDT

Press Release, dated 01-01-2024

The Central Board of Direct Taxes (CBDT) has released data related to the submission of Income-tax Returns by the taxpayers for the Assessment Year 2022-23. It was stated that a record-breaking 8.18 crore income tax returns were submitted for the assessment year 2023-2024 by December 31, 2023, surpassing the 7.51 crore filings by the same date in the previous year. This reflects a 9% increase compared to the total number of ITRs filed for the assessment year 2022-23.

Further, the total number of audit reports and other forms filed during the period is 1.60 crore, as against 1.43 crore audit reports and forms filed in the preceding year's corresponding period. Further, the e-filing Helpdesk team handled approximately 27.37 lakh queries from taxpayers during the year up to 31.12.2023, supporting the taxpayers proactively during the peak filing periods.

Direct Tax Updates

1. Expression 'Used for Purposes of Business' in Sec. 32(1) Had to Be Construed Liberally to Include Even Passive Use

In the instant case[1], the assessee-company was engaged in the business of sharing telecom infrastructure amongst various telecom service providers. During the year, the assessee took a loan for the construction of the tower. It claimed depreciation on the tower. It also claimed interest paid on the loan and upfront processing charges on the loan.

The Assessing Officer (AO) disallowed interest paid on the loan and depreciation primarily on the grounds that not all the towers might have been put to use as the tower-wise details had not been furnished.

On appeal, the CIT(A) and Tribunal ruled in favour of assessee. The matter reached the Delhi High Court.

The Court held that the expression 'used for the purposes of business or profession' in the provision under section 32 had to be construed widely. This includes not only those cases where the buildings, machinery, plant, etc., are actively employed but also those cases where there is what may be described as a passive user of the same in the business because of various reasons, including that machinery, may well depreciate even where it is not used in the business and even due to non-user and being kept idle.

The towers which were constructed subsequent to the commencement of business of the assessee were so constructed admittedly during the year relevant to the subject assessment year. The expression 'used for the purposes of the business' in section 32(1) has to be construed liberally so as to include even passive users of the subject machinery (towers in the instant case). It was nobody's case that the profits earned by the assessee had no nexus with the towers in question.

Therefore, there was no infirmity in allowing the amount of depreciation concerning the said towers to be deducted.

[1] Principal Commissioner of Income-tax vs. Indus Towers Ltd. - [2023] (High Court of Delhi)

2. Interest Paid on Capital Account of Partner to Be Allowed If It Was Borrowed to Settle Debt of Partnership Firm

In the instant case[2], the Assessee-firm was engaged in the business of running a hotel. During the relevant assessment year, the firm reconstituted with the retirement of '4' partners and the induction of a new partner. The retiring partners were paid their proportionate share in the assets of the partnership firm. The firm borrowed a loan from the bank and raised fresh capital from the incoming partner to settle the debt and capital account of retiring or outgoing partners.

The assessee claimed the interest paid on such loan as a deduction while computing the income. During the assessment proceedings, the Assessing Officer (AO) contended that the payment to outgoing partners was a family settlement. Thus, any interest paid on such family settlement cannot be considered as interest paid on a loan borrowed for the purpose of the assessee's business. Accordingly, the AO disallowed the interest paid on such loan and made additions to the income of the assessee.
On appeal, the CIT(A) confirmed the additions made by AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

[2] Ariff & Co. vs. Assistant Commissioner of Income-tax - [2024] (Chennai-Trib.)

The Tribunal held that the firm was carrying on the business of running a hotel called the 'Hotel President'. The firm borrowed a loan from Punjab National Bank and raised fresh capital from incoming partners to settle the debt or capital account of retiring/outgoing partners. The settlement of the capital account of outgoing partners becomes debt of the partnership firm.

The discharge of said debt out of borrowed funds assumes the character of loans/funds borrowed for the assessee's business. The firm has claimed depreciation on the building on which the hotel was constructed and managed. Therefore, when the partnership firm owned the asset, any settlement out of assets belonging to the firm to the outgoing partners cannot be considered a settlement of family property just because the partners were family members. Therefore, it is very clear that retired partners take a portion of the value of the firm's assets, and thus, just because the asset has been revalued before the reconstitution of the partnership firm cannot be a reason for the AO to treat the settlement of firm properties among partners as settlement of family property.

Since the loan borrowed from the Bank and capital raised from an incoming partner was for the purpose of the business of the assessee, any interest paid on said loan and capital account is nothing but the interest paid on the loan borrowed for the business of the assessee and allowable as per the provisions of the Act.

Accordingly, the additions made by the AO were directed to be deleted.

3. Expenditure Incurred Towards Interior Decoration Work of Rented Office Premises is Allowable As Revenue Expenditure

In the instant case[3], the assessee had incurred certain amount towards interior decoration of office premises. It had claimed it as revenue expenditure. However, the Assessing Officer held that said expenditure incurred by the assessee was capital in nature.

The matter reached before the Tribunal.

The Tribunal held that the assessee was in the entertainment business. Thus, the interior decoration of the office is very important, and with its help, the assessee can impress its clients and make better efforts to increase its business.

The assessee had also incurred office rent expenses. There was no immovable property in the form of an office under the head 'fixed asset'. It prima facie indicates that the assessee incurred some interior decoration work in the rental premises, which was subject to change as and when needed.

Therefore, considering the total turnover of the assessee, the alleged sum being hardly 1 per cent of the gross turnover, and the assessee not having any self-owned office premises, it is to be held that it is a revenue expenditure, and the same should be allowed.

[3] Harmuny Entertainment (P.) Ltd. v. DCIT - [2023] (Kolkata-Trib.)

4. Sec. 79 Not Applicable If Change in Shareholding Occurs Between Shareholders Being Holding & Subsidiary Co.

In the instant case[4], the assessee-company engaged in providing healthcare services was held by two shareholders, FHL and FHHPL. During the year, the assessee issued equity shares at premium to FHL, which resulted in change in the shareholding pattern between both the shareholders, i.e., the holding of the FHL increased to 85 per cent while the holding of FHHPL was reduced to 15 per cent. The assessee claimed set-off of brought forward losses.

Assessing Officer (AO) took the view that the change in shareholding pattern between two shareholders would be hit by provisions of section 79. Accordingly, he held that the assessee was not entitled to carry forward and set off accumulated losses and rejected the claim for set-off of brought forward losses.

On appeal, the CIT(A) upheld the order of AO. The matter was reached before the Mumbai Tribunal.

The Tribunal held that a perusal of section 79 would show that the said provision bars setting off brought forward losses if the shares of the company carrying not less than 51 per cent of the voting power were not beneficially held by the very same persons in the years in which the losses were incurred and the years in which the said loss was sought to be set-off.
In the instant case, it was noticed that there are only two shareholders, viz., FHL and FHHPL. As mentioned above, both shareholders have beneficially held 51 per cent of the voting power as a group. Further, the FHHPL is a holding company of FHL.

Hence, the increase in FHL shareholding in the assessee, in any case, would not result in a change in the voting power of the shareholders. Accordingly, the provisions of section 79 will not be applicable in the facts of the instant case. Hence, the view expressed by the tax authorities that the change in individual shareholding would also attract the provision of section 79 is not justified.

Accordingly, the order passed by the Commissioner (Appeals) on this issue is to be set aside and the Assessing Officer is to be directed to allow set-off brought forward losses.

[4] Hiranandani Healthcare (P.) Ltd. v. CIT (Appeal), National Faceless Appeal Centre - [2023] (Mumbai-Trib.)