2, India Exchange Place,
2nd Floor, Room No 10,
Kolkata – 700001

Ph: 033-22306990/ 40032841
Email id: info@acbhuteria.com

Tax Digest

- Recent case laws

January 16, 2023

CBDT removed limit of Rs. 5,000 for submission of SFT in relation to interest income

Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish statement of financial transaction (SFT). For the purposes of prefilling the return of income, CBDT has issued Notification No. 16/2021, dated 12-3-2021 to include reporting of information relating to interest income.
The information is to be reported for all account/deposit holders where any interest exceeds zero per account in the financial year excluding Jan Dhan Accounts.

Direct Tax Updates

1. Section 40(b):

a. No disallowance u/s 40(b) if 'remuneration' paid to working partners is within the limit u/s 40(b)(v)
b. Salary, bonus, & commission paid to partners collectively termed as 'remuneration'; not subject to TDS: ITAT

In the instant case[1], the assessee is a partnership firm, engaged in construction business. An income of Rs.1,21,98,600/- was declared in an e-return filed for the AY 2017-18. The case was subsequently selected for scrutiny through CASS for high ratio of refund to TDS; large value claim of refund and large increase in capital in a year. Valid notices u/s. 143(2) & 142(1) of the Act were issued. Various details were called for by the ld. AO, which the assessee has filed. Income was finally assessed at Rs. 4,84,36,311/- after making various disallowances including *inter alia,* disallowance u/s 40(b) of the Act amounting to Rs. 66,43,474/- and Rs. 14,82,595/- u/s 40(a)(ia) of the Act.

Aggrieved, the assessee preferred an appeal before the ld. CIT(A) and succeeded. The Revenue thus preferred an appeal before the Tribunal.

The Hon'ble Tribunal observed that since salary, bonus, remuneration or commission are collectively termed by section 40(b)(i) as "remuneration" for section 40(b)(v) purposes, no disallowance is to be made by AO where the 'remuneration'(aggregate of salary, bonus, commission and remuneration) paid to working partners during the year is within the permissible limit provided u/s.40(b)(v) of the Act, Where the aggregate of salary and commission paid to working partners in the instant case is within the limit stipulated by section 40(b)(v), no disallowance is to be made in respect of the same.

[1] ACIT vs. Dhar Construction Company (ITAT, Gauhati) [2023]

Any payment of salary, bonus, commission or remuneration, is collectively termed as "remuneration" as per section 40(b)(i) of the Act. As such, no TDS is deductible u/s 194H from commission payable to partners. The contention of the AO that the provisions of section 194H of the Act, which is otherwise applicable in case any commission or brokerage is paid, is also applicable in cases, where commission is paid by a partnership firm to its partners, authorized by the partnership deed, was incorrect.

Explanation 2 to Section 15 of the Act specifically provides that salary, bonus, commission, remuneration etc by whatever name called due to or received by a partner of a firm from the firm shall not be for regarded as "salary" the purposes of this section. Accordingly, provisions of Section 192 related to salary would also not be applicable in cases where remuneration has been paid by partnership firm to its partners.

2. Section 148A:

HC quashed reassessment notice issued to a father acting as a special power of attorney for her daughter

In the instant case[2], the petitioner is an individual assessee to tax, served with a notice under section 148 A(b) of the Act of 1961 calling upon him to show cause as to why notice under section 148 of the Act of 1961 should not be issued. It was stated that on the basis of information it was found that for Assessment Year 2015-16 income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act of 1961. The petitioner was

[2] Naresh Balchandrarao Shindev v. ITO (Bombay High Court) [2023]

informed that he purchased immovable property for Rs. 40,00,000/- and that he had deposited cash of Rs. 20,71,500/- and Rs. 16,20,000/-in his bank account. The petitioner was called upon to submit his response to the notice, to which he submitted by stating that he had not purchased the property in question but a sale deed dated 3-2-2015 was executed in favour of his daughter who had purchased the suit property. The petitioner was only acting as special power of attorney holder for her. The amount of Rs. 40,00,000/- did not belong to the assessee. As regards deposit of cash of Rs. 16,20,000/- was concerned, the same was denied by the petitioner. He sought source of information as regards the aforesaid deposit. It was thus the case of the petitioner that after excluding the aforesaid two amounts, the income remaining was only to the extent of Rs. 20,71,500/- which was less than the limit of Rs. 50,00,000/- as stipulated in Section 149(1)(b) of the Act of 1961. The Assessing Officer however did not accept the petitioner's explanation and on the basis of information available on record, satisfaction was recorded that income to the tune of Rs. 76,91,500/- was likely to have escaped assessment in the hands of the assessee for Assessment Year 2015-16. Hence it was proposed to issue notice under section 148 of the Act of 1961. Being aggrieved said order was challenged.

It was noted from the registered sale deed that said property belonged to daughter of the assessee who was a separate assessee. She had purchased it by availing a housing loan. However, the Assessing Officer had not taken the same into consideration.

Therefore, the amount of Rs. 40 lakhs was to be excluded from consideration. Also, since the remaining amount alleged to have escaped was less than Rs. 50 lakhs as contemplated under section 149(1)(b), the impugned notice issued beyond permissible period of three years was to be quashed and set aside.

3. Section 45(4):

Revaluation of Assets of Partnership Firm – 'Transfer' under Section 45(4)

In the instant case[3], the Mansukh Dyeing and Printing Mills was formed with four partners (all brothers) namely Shri MH Doshi (MHD), Shri Manohar Doshi (MD), Shri VH Doshi (VHD) and Shri Hasmukhlal H Doshi (HHD). On 02.05.1991, vide a family settlement agreement, the ratio of MHD which used to be 25% in the firm was diluted to 12%. The balance 13% was given to three new partners Smt Rajan Doshi (RD), Shri Prakash Doshi (PD) and Shri Rajeev Doshi (RD). After certain time, MHD, MD and VHD retired and firm had HHD, RD, PD and RD as partners.

On 1.11.1992, the firm was again re-constituted and four more partners namely, Smt Vaishali Shah (VS), Smt Bhavana Doshi (BD), Smt Rupal Doshi (Rupal) and Ranjana Textile Private Limited (RTPL) were added and HHD and RD have retired.

On 1.01,1993, the assets of the firm were revalued, and an amount of Rs 17.34 Crores were credited to the accounts of the partners in their profit-sharing ratio. Two of existing partners, HHD and RD withdrew part of their capital (balance after the revaluation profit arising from the assets). The firm filed the return of income for Assessment Year (AY) 1993-94, showing income of Rs 3,18,760/-. The assessment was reopened and as a result of reassessment, an income of Rs 17.34 Crores was made towards the short-term capital gain under Section 45(4).

The Assessing Officer (AO) opined that since the firm has revalued the assets from Rs 21 lakhs to Rs

[3] CIT v. Mansukh Dyeing and Printing Mills (Supreme Court) [2022]

17.56 Crores, the gain arising from revaluation of assets, amounting to Rs 17.34 Crores, which was credited to capital accounts of partner were brought to tax under Section 45(4) as short-term capital gains, since the firm claimed depreciation on the said assets.

The Commissioner (Appeals) has confirmed the order of AO by stating that there is a clear distribution of assets as partners have also withdrawn amounts from the capital accounts. The Commissioner (Appeals) further stated that the value of assets which commonly belonged to all the partners have been irrevocably transferred in their profit-sharing ratio to each partner. The Commissioner (Appeals) has relied on the Bombay High Court judgment of AN Naik Associates & Others (supra) and distinguished the decision of CIT v. Texspin Engg and Mfg Works4.

When the matter reached the ITAT5, by relying on the decision of Supreme Court in CIT v. Hind Construction Ltd.6 , the Tribunal stated that revaluation of assets and crediting to partners account did not involve any transfer. When the matter reached High Court, the decision of Tribunal was upheld for the same reason as stated by Tribunal.

Finally, the matter has been challenged before the Supreme Court by the Revenue. The Revenue contended that the judgment in Hind Construction Ltd. (supra) should not be applicable to the facts in the instant case, because the said judgment is prior to insertion of Section 45(4). Further, Revenue contended that the decision of Bombay High Court in AN Naik Associates (supra) lays down the law in correct manner and accordingly the same needs to be applied. On the other hand, the firm contended that, there cannot be transfer for the sole reason that the revalued amount is credited to the capital accounts of the partner. The accounting standards also stipulate the same methodology. Further, the firm contended that the provisions of Section 45(4) only cover the instances of dissolution and not retirement. Since in the instant facts, the firm was not dissolved, they cannot be brought to tax under Section 45(4).

Thus, the Supreme Court is seized with the question that, whether the distribution of capital assets at the time of retirement is also covered under the ambit of Section 45(4)? The Supreme Court after referring to the decision of Bombay High Court in AN Naik Associates (supra) has stated that in the facts of the firm, the assets were revalued, and the revalued amount was credit to the partners capital account in their partner's profit-sharing ratio. The said credit of assets revaluation amount to capital accounts of partners can be said to be in effect distribution of assets valued at Rs 17.34 Crores. The Supreme Court has held that the assets so revalued and the credit to the capital accounts of respective partners can be said to be 'transfer' and falls under the ambit of 'otherwise' as specified in Section 45(4).

Accordingly, the Supreme Court upheld the judgment of Bombay High Court in AN Naik Associates & Others (supra) and stated that reliance on Hind Constructions Ltd. (supra) by ITAT and High Court is not correct, since the said judgment was prior to insertion of Section 45(4).

4. Abandoned Films Can Claim Expenses : Mumbai ITAT

Where assessee was engaged in business of cinema photographic films and claimed legal and professional expenses incurred for a dispute with respect to one of its films, since expenses were incurred wholly and exclusively for purpose of business, whether film would release or not would be irrelevant and expenses were to be allowed as deduction

In the instant case[4], The assessee is a company engaged in the business of cinema photographic films. In this case, the assessee had hired a producer who was producing the feature film namely 'Sher' with star cast of M/s. Sanjay Dutt and Vivek Oberoi and being directed by Mr. Soham Shah and granted a trading advance of Rs. 17.50 Crores under an agreement dated 22/02/2012.

The assessee in the course of its business, used to get films produced from contract producers for a definite budget (Price). Feature films are stock-in-trade of the assessee costs of which are fully deductible against the revenue generated.

During scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed legal and professional fee of Rs. 27,40,834/- but "since it is not an expenditure co- relatable to any income credited in the profit and loss account during year under consideration" the said expenses were disallowed. The assessee plea that these amounts were paid to the lawyers to represent the assessee before Hon'ble Bombay High Court as there was dispute with respect to film "Sher" with Ashthivinayak Cinevision, the entity which was to produce the same under arrangements with the assessee, was rejected. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without complete success. The assessee went in further appeal before The Mumbai Tribunal.

According to Mumbai Tribunal, the learned CIT(A) retained the disallowance of Rs. 22,86,520/- for the short reason that these expenses pertain to a film which may not be released. In Tribunal's considered view, this approach is clearly erroneous because as long as it is not in dispute that the expenses are incurred wholly and exclusively for the purpose of business, as indeed is the position in this case, there is no occasion for disallowance of such expense. Whether the film is released or not, or whether it turns out to be a dud project, as in this case, is wholly irrelevant. The Mumbai Tribunal , therefore, upheld the plea of the assessee and directed the Assessing Officer to delete the disallowance of Rs. 22,86,520/-. The assessee got the relief accordingly.

[4] **Steller Films (P.) Ltdv. ACIT (ITAT Mumbai) [2022]**