Direct Tax Newsletter

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Tax Digest

- Recent case laws

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NEWS FEED

CBDT Amends Form 27Q | Added 'Note 7A' for Furnishing Information About Lower or No TDS u/s 197A

Notification No. 48/2024, dated, 31-05-2024

The Central Government has notified the Income-tax (Sixth Amendment) Rules, 2024. As per the amended norms, an additional 'Note' has been inserted in Form No. 27Q. The additional note pertains to the verification section of the form. Taxpayers are now required to write "P" if a lower deduction or no deduction is in view of the notification issued u/s 197A(1F).

Section 197(1F) provides that tax shall not be deducted for payments to certain persons or classes of persons, including institutions, associations, or bodies, as specified by the Central Government in the Official Gazette.

1. Compensation Received From 'Flipkart' for Loss in Value of ESOP Due to Disinvestment Not Taxable as Perquisite

In the instant case[1], the petitioner, Sanjay Baweja, was an ex-employee of Flipkart Internet Private Limited (FIPL), a wholly-owned subsidiary of Flipkart Marketplace Private Limited (FMPL). FMPL was a wholly-owned subsidiary of Flipkart Pvt. Ltd., Singapore (FPS). In 2012, FPS rolled out an Employee Stock Option Plan (ESOP) called Flipkart Stock Option Plan (FSOP).

The petitioner was granted 1,27,552 stock options from 01.11.2014 to 31.11.2016 with a vesting schedule of 4 years. On 23.12.2022, FPS announced the disinvestment of its wholly-owned subsidiary called PhonePe. Thereafter, the value of the stock options of FPS fell, and FPS decided to grant the option holders a payment of USD 43.67 per option as compensation towards the loss in the value of the options. It was also stated that the FPS would be withholding tax on the said compensation considering it as a perquisite under Section 17(2)(vi). The petitioner filed an application under Section 197 seeking a 'Nil' deduction certificate.

The Assessing Officer (AO) rejected the application, and the matter reached the Delhi High Court.

The High Court held that the amount in question cannot be considered as a perquisite under Section 17(2)(vi) as the stock options were not exercised by the petitioner, and the amount in question was a one-time voluntary payment made by FPS to all option holders in lieu of the disinvestment of PhonePe business.

The most crucial ingredient of the inclusive definition of perquisite is the determinable value of any specified security received by the employee by way of transfer/allotment, directly or indirectly, by the employer. As per Explanation (c) to Section 17(2)(vi), the value of specified security could only be calculated once the option is exercised. A literal understanding of the provision would provide that the value of specified securities or sweat equity shares is dependent upon the exercise of option by the petitioner. Therefore, for an income to be included in the inclusive definition of "perquisite", it is essential that it is generated from the exercise of options, by the employee.

In this case, the petitioner had merely held the stock options without exercising them, so they do not constitute taxable income for the petitioner since none of the contingencies specified in Section 17(2)(vi) have occurred.

[1] Sanjay Baweja v. DCIT - [2024] (ITAT Delhi)

2. FA 2017 Amendment Restricting Set-off of House Property Loss to Rs. 2 Lakh is Constitutionally Valid

In the instant case[2], by way of the instant writ petition, the Delhi High Court was called upon to examine the constitutional validity of Section 31 of the Finance Act 2017, which has brought about an amendment in the Income-tax Act 1961 by inserting sub-section (3A) to Section 71.

The petitioner was a government employee who claimed to have constructed his house in April 2014 by incurring an expenditure of Rs.1.35 crore. The said construction was financed through a housing loan, partially raised from the IDBI Bank and the rest from his father, amounting to 85,00,000 and 50,00,000, respectively.

[2] Sanjeev Goyal vs. Union of India - [2024] (High Court of Delhi)

Since the house was constructed from borrowed capital, the amount of interest payable on such capital was eligible for deduction from the head "Income from house property". The income chargeable under the said head was required to be computed after making a deduction of the interest payable on such capital. The said deduction was also eligible for set-off as per the provisions of Section 71 of the Act.

However, by virtue of the Finance Act 2017, the threshold limit for set off of loss under the head "Income from house property" against any other head of income was restricted to an amount of Rs 2 lakh for a particular Assessment Year with effect from 01.04.2018, i.e., for AY 2018-19 and subsequent AYs.

The petitioner contended that the amendment was prejudicial to his interest as he could not have foreseen that he would be disentitled from claiming the benefits of the provisions in question. The amendment caused a financial burden on the petitioner, leaving him with a meagre disposable income to run the livelihood. Further, the amendment is against the principle of fairness, which must be the basis for every legal rule.

The High Court held that the subsequent amendment in Section 71 only aims at capping the set off of losses under the head of "Income from house property" from any other head of income at ?2 lakh. It only attempts to circumscribe the indefinite amount of set-off to a certain amount. The change introduced by the legislation reflects the larger policy of the legislature. It has an equalizing effect on all the taxpayers claiming any deduction under the abovementioned head.

The amendment is applicable to all the category of persons without any apparent or real discriminatory classification. It does not have the effect of creating any separate class or classification. The alteration in the manner of imposing tax in the present case cannot be said to deprive the taxpayer of a benefit. Instead, it is tantamount to a realignment of the existing provisions, bearing in mind the broader economic and policy considerations, which the legislature is duly empowered to do.

Therefore, the amendment applies to all persons without any apparent or real discriminatory classification. As a sequitur, it cannot be said to be against the tenets of equality encapsulated in Article 14 of the Constitution.

3. HC Quashed Assessment Order as Assessee Wasn't Aware of SCN & Order Uploaded on Portal | Directed to Provide Another Opportunity

In the instant case[3], the petitioner was aggrieved by the assessment order passed against it. It filed writ petition and contended he was unaware of these notices and the impugned assessment orders since they were uploaded on the portal without being served on the petitioner through any other mode. It was also contended that the department passed the order without providing opportunity of being heard and a large tax demand was confirmed without a reasonable opportunity.

The Honorable High Court noted that the documents on record indicated that the assessment orders were preceded by an intimation and a show cause notice. The assessment orders also disclosed that three opportunities were provided to the petitioner for a personal hearing in December 2023.

[3] Amnet Systems (P.) Ltd. v. State Tax Officer - [2024] (High Court of Madras)

However, the petitioner did not participate in proceedings and therefore could not place its objections on record with regard to the tax demand. Therefore, solely for the purpose of providing an opportunity to the petitioner, the impugned assessment orders were interfered with.

The Court also directed the Assessing Officer to provide a reasonable opportunity to the petitioner including a personal hearing, and thereafter issue fresh assessment orders within two months.

4. CBDT Rightly Refused Request for Condonation of Delay as Assessee Was Regularly Filing Belated Returns

In the instant case[4], in the present case, the petitioner preferred a writ petition against the order passed by the CBDT, refusing to invoke the powers of condonation of delay for the return filed by the petitioner for the assessment year 2020-21.

High Court Held

The power of condonation of delay is otherwise conferred under section 119(2) of the Income Tax Act, 1961. The High Court observed that the CBDT, while dealing with the prayer for condonation as was made, took into consideration the following facts:

(a) The applicant claimed that due to the constant challenges arising due to the COVID-19 pandemic, it could not file the ITR for FY 2019-20 on time. However, the last date for filing ITR was extended up to 15.02.2021, but even after that, the applicant had not filed its ITR within time. The financials for the year under consideration were signed on 31st July 2020, and ITR was filed on 30.03.2021. Hence, this was merely negligence on the applicant's part, which cannot be construed as reasonable grounds for not filing the ITR.

(b) The petitioner claimed that it had been a law-abiding person and always complied with tax obligations in a timely manner, and this delay was a one-off aberration. However, as per the AO report, the petitioner had filed its return u/s 139(4) for AYs 2019-20, 2020-21, 2022-23. Thus, it can be observed that the applicant is regularly filing belated returns, which is not an aberration.

(c) The petitioner also claimed that the delay in filing ITR was due to financial crisis and cash crunch during the period. However, as per P&L for the year ending 2020, the petitioner showed a profit of 248.05 million, which is more than the previous year. Also, as per the cash flow statement for the year ending 2020, total cash equivalents were recorded as 123.35 million. This positive cash flow contradicts the claim of a financial crunch.

The applicant could have engaged in proactive financial planning to meet its tax obligations within the prescribed time frame. Thus, this justification of the applicant was not tenable and doesn't seem genuine. It cannot be construed that there were circumstances beyond the control in complying with tax obligations.

[4] Lava International Ltd. v. Central Board of Direct Taxes - [2024] (High Court of Delhi)