Direct Tax Newsletter

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Tax Digest

- Recent case laws

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NEWS FEED

CBDT Allows E-Filing for Forms 3CN, 3CS, 3CEC, 3CEFB, 59, and 59A

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The Central Board of Direct Taxes (CBDT) has specified the e-filing of 6 forms under rule 131 of the Income Tax Rules, 1962. These include forms for making applications under section 35AD, pre-filing meetings, Opting for Safe Harbour in respect of Specified Domestic Transactions, etc., namely, Form 3CN, 3CS, 3CEC, 3CEFB, 59, and 59A.

1. Sum Received for Relinquishment of Right to Operate Hotel Under Operating License Agreement Is Revenue Receipt

In the instant case[1], the assessee was engaged in various business activities. Under the Operating Licence Agreement with the owner, the assessee was granted a licence to operate the hotel 'Sea Rock' for 25 years with an option to renew the licence for a further period of 25 years. The assessee did not have any right, title or interest in the hotel in question.

Subsequently, the assessee entered a settlement agreement with the owner under which the settlement amount relating to the licence in question was received by the assessee from the owner as per the arbitrator's award. While furnishing the return of income, the assessee treated such receipts as long-term capital gains. However, the Assessing Officer (AO) disallowed such a claim of the assessee and treated such amount as a revenue receipt.

On appeal, CIT(A) deleted the additions made by AO. Afterwards, the Tribunal dismissed the appeal, and the matter was reached before the Calcutta High Court.

The High Court held that from the recital of the "Operating License Agreement", it was evident that the assessee was rendering services to the owner to run the hotel in question under an agreement which resulted in a trading cum service contract. The Operating License Agreement was entered during the usual course of its various business activities, including running /operating the hotel.

No right in the hotel in question was conferred upon the assessee under the License Operating Agreement except to run the hotel on certain terms and conditions with ensured income to the owner as part of business activity. Further, all the employees required to run the hotel were employees of the owner.

The termination of the agreement resulted from the settlement /compromise of all claims, counterclaims and disputes relating to the business contract, and in lieu thereof, the assessee received a compensation and not in lieu of its rights in any capital assets.

The said amount was part of the award by the Arbitrator as per consent terms. Thus, the amount received as per consent terms to settle/ compromise all disputes or, in any case, in the form of compensation for the loss of trading operation of running the hotel under the agreement and not for the loss of any asset of enduring value.

Under Article XVII of the "Operating License Agreement", the owner had the sovereign right to terminate the agreement. Thus, the termination of the "Operating License Agreement" and payment of such amount by the owner to the assessee was revenue receipt in the hands of the ITC, not capital receipt.

2. Set-Off of STCL on Which STT Was Paid Against STCG Not Subject to STT Is Valid

In the instant case[2], the Assessee, a Mauritius-based company, was registered with the Securities and Exchange Board of India as a foreign portfolio investor (FPI). During the relevant assessment year, the assessee earned short-term capital gain that was not subject to securities transaction tax (STT) and was taxable at the rate of 30 percent. The assessee also incurred short-term capital loss subject to STT and was in the 15% tax category.

[1] PCIT vs. ITC Limited - [2024] (High Court of Calcutta)

[2] iShares Msci EM UCITS ETF USA ACC vs. Deputy Commissioner of Income Tax [2024](Mumbai-Trib.)

While furnishing the return of income, the assessee had set off short-term capital losses against the short-term capital gains. During the assessment proceedings, the Assessing Officer (AO) contended that the set off of losses having lower taxability with gains of higher taxability was not in order. Thus, the AO computed set-off of short-term capital loss covered under section 111A against short-term capital gains chargeable to tax at the rate of 15% and did not grant any set-off short-term capital gain which was chargeable to tax at the rate of 30%.

On appeal, the Dispute Resolution Panel (DRP) also confirmed the action of the AO. Aggrieved by the order, the assessee preferred an appeal to the Mumbai Tribunal.

The Tribunal held that Section 70(2) provides that where the assessee suffers a short-term capital loss, the assessee shall be entitled to set off such losses against capital gain computed similarly as under sections 48 to 55 of the Act. According to section 70(3), where the assessee suffers long-term capital loss, the assessee shall be entitled to set off such losses against the long-term capital gains computed similarly as provided under sections 48 to section 55.

Sections 48 to 55 do not provide for the tax rate on capital gain. It specifically lays down the computation mechanism of capital gain and certainly not tax on such capital gains. It is not the case that either in the computation of short-term capital gains or short-term capital loss, there is any difference in the manner of computation. Therefore, short-term capital gain and short-term capital loss arising during the year are computed similarly as provided under sections 48 to 55 of the Act.

Thus, there was no reason to deprive the assessee of set-off of short-term capital losses suffered by the assessee for the same year against the short-term capital gains earned by the assessee. Such a claim was in accordance with the provisions of section 70(2) of the Act.

3. Provision for Staff Welfare and Loss on Guarantee Is Ascertained Liability; Not to Be Added While Computing Book Profits

In the instant case[3], the assessee company manufactured chassis and vehicles for the transport of goods and passengers. It filed its return of income declaring nil income as per the normal provisions of the Act. During the assessment proceedings, the Assessing Officer adjusted the book profit under section 115JB for the provision of staff welfare expenses and loss on guarantee.

On appeal, the Commissioner (Appeals) deleted the adjustment made by the Assessing Officer, holding the same as ascertained liability. Aggrieved by the order, an appeal was filed to the Mumbai Tribunal.

The Tribunal held that the provision for staff welfare expenses had been worked out on a scientific basis by accrual method and represented the provision for meeting ascertained liabilities. Therefore, no adjustment could be made to the book profit. There is no rebuttal that the provision has been made based on the accrual method, and consequently, it cannot be held that it is an unascertained liability. Accordingly, the

[3] DCIT v. Tata Motors Ltd. - [2024] (Mumbai-Trib.)

observation and the finding of the CIT(A) were thus confirmed.

On the provision for loss on guarantee, it was held that the provision was a contractual liability based on the agreement, and the company had to account for the accrued liability. Accordingly, the issue was decided in favour of the assessee.

4. AO is to Hold Personal Hearing in Designated Area of Tax Office If Video Conference Facility is Not Available

In the instant case[4], the assessee's case was selected for scrutiny, and an assessment order was passed. After that, revisionary proceedings were initiated under section 263, and an assessment order was set aside. The Assessee requested a personal hearing.

However, revenue denied the same on the grounds that a personal hearing through videoconferencing was not possible. The assessment order was passed without providing the assessee with the opportunity, and additions were made under section 68. The assessee filed a writ petition before the Gujarat High Court.

The High Court held that the AO passed the assessment order under section 143(3) read with section 263 without providing the opportunity of personal hearing in violation of the principle of natural justice.

As per the provisions of section 144B of the Income Tax Act and Circular No. 06.09.2021 issued by the CBDT, the AO is required to give a personal hearing through video conference. If the facility is unavailable, the personal hearing is to be conducted in a designated area in the Income Tax Office, and the proceedings are to be recorded.

Therefore, the AO's contention that there needed to be functionality to conduct hearings through video conferences cannot be accepted. Not providing the opportunity of hearing to the assessee, though required as per the provisions of section 144B, was a breach of the principle of natural justice.

Accordingly, the matter was remanded to the AO to give the assessee an opportunity to be heard either through video conference or through a personal hearing in the designated area of the income tax office.

[4] Fusion Granito (P.) Ltd. v. ACIT - [2024] (High Court of Gujarat)