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NEWS FEED

Malaysia Offers Tax Exemption to Qualifying Trusts on Foreign Income Received Within Country and More

Source: *Income Tax (Unit Trust) (Exemption) Order 2024 Income Tax (Unit Trust in Relation to Income Received in Malaysia from Outside Malaysia) (Exemption) Order 2024*

Malaysia published the Income Tax (Unit Trust) (Exemption) Order 2024 and the Income Tax (Unit Trust concerning Income Received in Malaysia from Outside Malaysia) (Exemption) Order 2024 in the Official Gazette. The first order exempts qualifying unit trusts resident in Malaysia from income tax on any gains or profits from the disposal of unlisted shares of a Malaysian-incorporated company, as well as from the disposal of shares under section 15C of the Income Tax Act 1967 (i.e., shares in a controlled company outside Malaysia). The second order exempts qualifying unit trusts from income tax on gross income from all sources under section 4 of the Act received in Malaysia from abroad during the basis period for a given assessment year subject to certain conditions.

1. No Books Maintenance Requirement for Agriculturist for Claiming Exemption u/s 10(1)

In the instant case[1], the assessee, a director of a seed company and graduate in agricultural science claimed exemption on agricultural income under section 10(1). The Assessing Officer (AO) doubted the genuineness of the agricultural income due to the absence of claimed expenses and sale bills, mostly to related parties. The AO added the agricultural income to taxable income, citing the lack of books of account as required under section 44AA.

The assessee's appeal to the NFAC was rejected, sustaining the AO's order. Aggrieved by the order, an appeal was filed to the Delhi Tribunal.

The Tribunal held that the AO noticed from the informations submitted by the assessee that the assessee had not claimed any expenses for earning agricultural income. The details were called for from the assessee, and after observing the submissions of the assessee, the AO rejected the submissions of the assessee with the observation that the assessee did not furnish any reasonable explanation and computation of agricultural income along with books of account maintained for the agricultural activities.

It was a fact on record that the assessee was holding agricultural land in different places, and the sales details were also submitted before AO. Also, the assessee was declaring agricultural income; it is brought to notice that income declared by the assessee for various assessment years was within the range of Rs. 33 lakhs to Rs. 38 lakh per annum. The assessee declared the income for the impugned assessment year to be around 23 lakhs without claiming any expenditure.

[1] Ishwar Chander Pahuja vs. ACIT - [2024] (Delhi-Trib.)

The AO rejected the above income and expressed doubt about agricultural income mainly because the assessee did not claim any expenditures in the return of income. Considering the regularity and consistency of declared income over the years and subsequent assessment years, the income declared by the assessee seemed to be in order. Also, the assessee was a professionally graduated in agricultural science.

Further, it was observed that assessee had not maintained any books of account as per section 44AA. The assessee's income falls under section 10(1) and as per section 44AA, as per the provisions of the Act, who are supposed to maintain books of account does not include agriculturists. Therefore, the assessee's case did not fall under section 44AA. It was further observed that the assessee submitted copies of bills of sale of agricultural produce to various persons, even though to the related parties.

Therefore, there was no reason to suspect the income declared by the assessee and the assessee's appeal was allowed.

2. Appellant's Challenge to ED's Attachment Order Dismissed as SC Ruling Excludes Covid-19 Period From Limitation

In the instant case[2], an FIR was registered against the appellant and based on it, ECIR was recorded. The allegation against the appellant was for criminal conspiracy, cheating and forgery.

It was in reference to irregularities in the allotment of residential rooms/shops under the Slum Rehabilitation Scheme implemented at Garib Mazdoor Sangh Zopadpatti to persons not connected to the said Zopadpatti.

[2] Shailesh Mulchand Savla v. Deputy Director, Directorate of Enforcement, Mumbai - [2024] (SAFEMA-New Delhi)

An inquiry revealed that many persons who were not entitled to it were allotted residential rooms/shops under the Scheme based on forged documents, such as affidavits, ration cards, electricity bills, etc. The amount involved in the said case was Rs.101.50 crores. The `Proceeds of crime' acquired by the appellant were utilized to purchase the subject immovable properties.

Based on the said FIR, an ECIR was registered, and subject properties were provisionally attached by ED. The said order of ED was confirmed by the Adjudicating Authority vide the impugned order.

The appellant challenged the said order on the ground that Section 5(1) of the Prevention of Money Laundering Act, 2002 gives life to an attachment order for 180 days, and it would lapse if it was not confirmed within the period given above. Since the impugned order dated 29.03.2022 was passed after 180 days of the provisional attachment order dated 18.06.2021, it was to be set aside.

It was noted that the Adjudicating Authority indeed needs to pass an order to terminate proceedings within 180 days; otherwise, the attachment would lapse, but there was an extra-ordinary situation during the period of COVID-19 and, the Supreme Court in Cognizance for Extension of Limitation, In re [2022] 134 taxmann.com 307/441 ITR 722 (SC) directed that period from 15-3-2020 till 28-2-2022 would stand excluded for purposes of limitation in respect of all judicial or quasi-judicial proceedings.

The Appellate Tribunal held that in the instant case, if the aforesaid period was excluded, the left-out period was hardly 26 days, i.e. less than 180 days. Therefore, the issue raised by the appellant was not worth acceptance and was to be rejected summarily. Accordingly, an instant appeal was to be dismissed.

3. SC Rules in Favour of Tax Dept. | Reassessment Notice Can Be Issued After 01-04-2021 Under Old Provisions

In the instant case[3], in Ashish Agarwal [2022] 138 taxmann.com 64 (SC), the Supreme Court addressed whether reassessment notices issued under the old regime were valid after the new, more favorable reassessment regime came into effect. The Court ruled that all reassessment notices post 01-04-2021 should comply with the new reassessment regime. However, notices under Section 148 of the old regime were deemed to be under Section 148A(b) of the new regime.

In the Ashish Agarwal ruling, the Supreme Court did not address whether or not the reassessment notices were issued within the time limits prescribed under the provisions of the Income Tax Act, read with the relaxations provided under TOLA.

This was the primary issue for consideration before the Supreme Court in the instant appeal. The Supreme Court held that as under:

TOLA extended the deadlines for certain actions under specified Acts that were due during the COVID-19 period. Section 3(1) of TOLA uses "any" to indicate that the relaxation applies to all actions due between 20-03-2020 and 31-03-2021. This section is concerned with the completion of actions under the specified Acts, and any amendment or substitution of provisions does not impact TOLA's application as long as the action falls within the specified period.

Section 2(1)(b)(ii) of TOLA defines 'specified Act' to include the Income Tax Act and after 1 April 2021, it must be read as the Act amended by the Finance Act 2021. The substitution of Sections 147 to 151 does not impact TOLA's purpose, which is to relax time

[3] Union of India v. Rajeev Bansal - [2024] (High Court of Gauhati)

limits for actions due between 20-03-2020 and 31-03-2021. TOLA remains applicable to the Income Tax Act after April 01, 2021 if actions under the substituted provisions fall within this period.

Section 3(1) of TOLA applies to the issuance of reassessment notices under Section 148 of the Income Tax Act. While TOLA did not amend the four- and six-year time limits under the Act, it provided a relaxation for issuing reassessment notices during the COVID-19 period.

TOLA does not apply if the time limit under Section 149 expires before 20-03-2020. When issuing a reassessment notice, the Revenue must check both the Section 149 time limit and TOLA's relaxation period. For example, the six-year limit for AY 2013-14 expired on 31-03-2020, but TOLA extended it to 30-06-2021.

Accordingly, after April 01, 2021, the Income Tax Act has to be read along with the substituted provisions. TOLA will continue to apply to the Income Tax Act after April 01, 2021, if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20-03-2020 and 31-03-2021.

TOLA will extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20-03-2020 and 31-03-2021, then the specified authority under Section 151(i) has extended time till 30-06-2021 to grant approval.

In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20-03-2020 and 31-03-2021, then the specified authority under Section 151(2) has extended time till 31-03-2021 to grant approval;

Thus, Assessing Officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time-barred and liable to be set aside.

4. No Sec. 234C interest if assessee paid full advance tax on interest income on which payer failed to deduct TDS

In the instant case[4], the assessee was a company incorporated in Singapore and was registered as a Category I Foreign Portfolio Investor (FPI) with the Securities and Exchange Board of India (SEBI). The assessee had made investments in debt securities and equity shares in India. The assessee received interest on commercial papers, non-convertible debentures and government securities. The assessee filed its return of income and paid full tax on interest receipts as advance tax. However, on some part of said interest income received by the assessee, the payers did not deduct tax at source, though the payers were liable to deduct tax at source as per sections 196D and 194LD. In view of same, the Assessing Officer levied interest under section 234C upon the assessee. This levy of interest was challenged before the Commissioner (Appeals) but without any success.

On appeal to the Tribunal, it was held that It is an undisputed fact that on some part of the interest received by the assessee on commercial papers, NCDs and Government securities, payers have faulted in not deducting the tax at source. It is true that for the fault of the payer, the assessee cannot be held responsible. For failure on part of the payer to deduct TDS under sections 196D and 194LD, the assessee cannot be penalized by levy of interest under section 234C. He has diligently discharged its

[4] Standard Chartered Bank (Singapore) Limited v. DCIT, International Taxation - [2024] (ITAT Mumbai)

full tax liability by paying the entire advance tax on the interest income.

As per Explanation 1, tax due on returned income means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

It can be seen that the advance tax is reduced by any tax deductible or collectible which means that even the legislators have taken care of liability of the payer to deduct tax at source on payments and to that extent, assessee is not required to pay any advance tax. In the case on hand, since the payers faulted in deducting tax at source, the assessee discharged its liability by paying the full tax. Therefore, the assessee cannot be levied with interest under section 234C for the fault of the payers. It is not case of deferment in payment of advance tax on income as envisaged in section 234C. Since the assessee has discharged the tax liability, no interest is leviable under section 234C. Accordingly, the Assessing Officer is directed to delete the impugned addition.