Celebrating 25 years of Service Excellence

SNR & COMPANY
CHARTERED ACCOUNTANTS

Income Tax Bulletin

July 2022

JUDICIAL UPDATES

1. *Payment for benchmarking services not FIS, not taxable as business income in absence of PE:*

Case of: **ACIT Vs. Reliance Industries Limited**
Decision by: **ITAT, Mumbai**
In favour of: **Assessee**

- Assessee is engaged in the business of oil exploration, manufacturing & trading of petrochemicals etc. & made payment to M/s Phillip Townsend Associates Inc. (PTAI) with NIL rate of TDS by furnishing the TRC for PTAI certifying its residency in the US & also submitted that PTAI did not have a PE in India. Since the income was in the nature of business income & not FIS, hence not taxable in India.

- Revenue concluded that the payments satisfied the conditions of Article 12(4)(b) of the India-US DTAA, & thus, held the payments to be FIS, liable for deduction of tax at source at 10%, which was rejected by the CIT(A).

- On Appeal, ITAT perused the agreement & the nature of services rendered by the PTAI & found that the payment was purely towards benchmarking of the services of the SPI and also, that such benchmarking study enabled the clients to undertake further course of action to improve its qualitative capacity. It further observed that PTAI did not provide any know how or technical knowledge but prompted its clients to take corrective action in above areas. Further, PTAI was not a domain expert in the area in which the assessee operated.

- ITAT held that the make available clause was not satisfied in the facts of the case & observed that merely providing commercial information through a benchmarking study does not in any manner makes available any technical knowledge, experience, skill, know how or processes, nor consist of the development and transfer of a technical plan or technical design.

Read Full Judgement: ACIT Vs Reliance Industries Limited

SNR's Take:

Through the ITAT's decision, it has been once again come to fore that for considering the payments as Fees for Included/ Technical Services (FIS), the satisfaction of 'make available' condition of any technical knowledge, experience, skill is mandatory. In the absence of which the amount cannot be regarded as FIS and would continue to be treated as business income.

2. *Sec.69A inapplicable on cash deposited during demonetisation, basis past trend of regular deposits:*

Case of: **Lateef Abdul Mohd. Vs ITO**
Decision by: **ITAT, Hyderabad**
In favour of: **Assessee**

- In this case, Assessee-Individual was subjected to addition of Rs.30 Lacs under Section 69A, attributable to cash deposits during demonetisation period and Rs.2.40 Lacs on account of low withdrawal which was upheld by the CIT(A).
- On appeal, ITAT noted Assessee's submission that the deposit of old currency notes in the bank account is out of the sale proceeds affected prior to the ban on currency notes and also that the addition of Rs.2.40 Lacs for low withdrawals is on the basis of presumptions and surmises without bringing any material on record to suggest that Assessee incurred more expenditure than what was shown in the capital account as withdrawals & observed that there was nothing on record to suggest that Assessee purchased any movable or immovable properties or incurred any expenditure for any marriage etc., or that it was leading a lavish lifestyle.
- On perusal of the month-wise cash sales and cash deposits made by the Assessee in the bank account, ITAT found that the cash sales in every month were substantial and observed that it was not a case where the Assessee made substantial cash deposits only in the demonetisation period.
- Thus, ITAT remarked that the lower authorities erred in disbelieving the submissions made by the Assessee

Read Full Judgement: Lateef Abdul Mohd. Vs ITO

SNR's Take:

The Tribunal has rightly held that additions cannot be made on the basis of presumptions and surmises but should be backed up by concrete evidence. In the current case, the assessee had majority of his sales proceeds in cash & thus, had a regular practice of depositing cash in his bank account which also continued during the demonetization period. As cash deposited during demonetization period was from his business proceeds, addition u/s 69A is not maintainable.

3. *Not all alleged 'underreporting' results in 'misreporting':*

Case of: **Prem Brothers Infrastructure LLP Vs NaFAC**
Decision by: **High Court, Delhi**
In favour of: **Assessee**

- In this case, Revenue passed the order under Section 270A imposing penalty of Rs.2.50 Cr on the Assessee-LLP, basis misreporting of income, against which the Assessee preferred the writ petition.
- During hearing, HC noted that the Assessee made a disallowance of Rs.3.20 Cr under Section 14A which was recomputed by the Revenue at Rs.6.82 Cr and observed that the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the Assessee.
- The court explained that even though considering that underreporting of income may result in misreporting of income, the underreporting allegedly done by the Assessee cannot amount to misreporting as the Assessee had furnished all the details of the transactions relating to disallowance made under Section 14A.
- The court further stated that Revenue and the Assessee used the same details to arrive at different conclusions i.e. differing quantum of disallowances under Section 14A, thus it held that lower disallowance under Section 14A would not amount to misreporting.

Read Full Judgement: Prem Brothers Infrastructure LLP Vs NaFAC

SNR's Take:

The High Court has delivered a significant judgement providing the necessary relief to the taxpayer and it shall go a long way in resolving disputes regarding differences between under-reporting and mis-reporting of income. The court relied on the coordinate bench ruling in ***Schneider Electric*** *wherein the penalty order was held to be erroneous and arbitrary as Revenue failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated. It remarked that, "there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied.*

4. *Facts non-existent during scrutiny assessment not 'material' for Sec.147:*

Case of: **Tata Communications Limited Vs DCIT**
Decision by: **ITAT, Mumbai**
In favour of: **Assessee**

- Assessee, engaged in communication business, was subjected to reassessment for AY 2003-04 on the basis of Assessee's submission for AY 2006-07 that Rs.13.51 Cr. was capitalised in April 2002 on the bona fide assumption that liability would be payable by it, which was reversed upon discovering that it was no longer payable.

- Revenue reopened the assessment on the basis that the Assessee had wrongly capitalised Rs.16.57 Cr in AY 2003-04 for SAFE Undersea Cable System which was not incurred towards the cost of assets on which Assessee claimed depreciation amounting to Rs.9.57 Cr. for AYs 2003-04 to 2005-06.

- On appeal, ITAT found that the Assessee was subjected to scrutiny assessment for AY 2003-04, during which Assessee submitted that its share in SAFE cable system was of Rs.236.82 Cr. & on Revenue's specific query, furnished details of the capital expenses incurred, considering which the assessment was finalised without any disallowance. It also observed that for AY 2006-07, on determination of the amount of liability, assessee itself reduced Rs.13.51 Cr. from the block of P&M entirely instead of reducing written down value and depreciation separately.

- ITAT observed that a fact which comes into existence subsequent to making of the assessment cannot be a material fact within the purview of Sec. 147 for re-opening assessment. *'The duty to disclose material facts necessarily postulates the existence of a thing or material. If a material is not in existence or if a material is such of which the assessee had no knowledge, there would be no duty to disclose such material'*.

- Thus, ITAT held initiation of reassessment proceeding as invalid.

Read Full Judgement: Tata Communications Limited Vs DCIT

SNR's Take:

The ITAT has delved into the important issue in relation to reassessment which is that if the material basis which re-assessment is being done were not present at the time of original assessment & whatever material facts were available were properly disclosed, then, it is not a fit case for re-opening the assessment as it does not formulate reasons to believe.

5. *Receipts from sub-licensing of technology is taxable as royalty:*

Case of: **Bosch Ltd. Vs DCIT**
Decision by: **ITAT, Bangalore**
In favour of: **Revenue**

- Assessee received Rs. 1.09 Cr from Malaysian company from sub-licensing of technology relating to manufacture and sale of products & spares & contended it to be taxable as long term capital gains. Revenue opined that the receipt was in the nature of royalty and taxable as business income, which was confirmed by CIT(A).

- On appeal, ITAT referred to the License and Technology Transfer Agreement and observed that the clauses make it clear that nomenclature of the agreement and claim made by assessee are contrary to the fact that only right to use was granted with restriction to use within the licensed territory, only for manufacture of contract products & opined that the license to use is covered under Explanation 2(ii) to Section 9(1)(vi) & thus, held that the payments received by the Assessee including the lump sum received is royalty which is revenue in nature.

- It further stated that the claim of the Assessee that there was transfer of capital asset is not legally tenable as Assessee never capitalised the expenditure related to technical know-how& Assessee hasn't recognised the Technical knowhow as capital asset in its books of account and had never claimed depreciation on it. Further, contents of the sub clauses of the agreement made it clear that there is no transfer & there is only rendering of continuous support, imparting of training & make available of knowledge.

- Based on the grounds, the ITAT rejected assessee's submissions & treated the amount as Royalty.

Read Full Judgement: Bosch Ltd. Vs DCIT

SNR's Take:

The Tribunal has rightly held that amount from sub-licensing of technology is a revenue receipt taxable as Royalty within the meaning of section 9 & cannot be regarded as capital receipt. More so, when the assessee itself has obtained the technology & making the payment as royalty to its AE.

6. *Manner of disbursement not decisive for determining nature of subsidy:*

Case of: **DCIT Vs Haldex India Pvt. Ltd.**
Decision by: **ITAT, Pune**
In favour of: **Assessee**

- Assessee, engaged in the business of manufacturing & sale of connecting rods & other goods was subjected to scrutiny assessment for AY 2014-15 whereby Revenue brought to tax Rs.4.58 Cr subsidy which was later deleted by CIT(A).
- On appeal, ITAT perused the scheme under which the subsidy was granted & observed that the subsidy was granted to encourage industrial growth in less developed areas of the State & the quantification of the subsidy was linked with the amount of investment made in setting up of the eligible units whereas the disbursal of the subsidy is in the form of VAT and CST paid on sale of excavators.
- It explained that the decisive factor for considering the nature of subsidy as a capital or revenue receipt is the purpose for which it is granted and not the manner of disbursement. It found that in the instant case, the purpose of subsidy was industrial growth and remarked that “simply because the subsidy has been disbursed in the form of refund of VAT and CST, it will not alter the purpose of granting the subsidy”.
- Thus, ITAT held the subsidy to be a capital receipt and not chargeable to tax.
- As regards applicability of Section 28(iv), ITAT observed that benefits envisaged under the provision have to be in kind, and monetary benefits are not covered by it.

Read Full Judgement: DCIT Vs Haldex India Pvt. Ltd.

SNR’s Take:

The Tribunal has provided a very pragmatic judgement wherein it has held that purpose of receipt is paramount in determining its character. The government can find multiple ways for payment of the benefit which cannot alter the nature of subsidy.

CIRCULARS/ NOTIFICATIONS

1. *CBDT modifies conditions in Form 10AC issued since Apr 1, 2021 to align with amended provisions:*

Finance act 2022 has inserted sub-section (4) in section 12AB, permitting the Commissioner of Income-tax to investigate if there is any specified violation by the trust or institution enrolled or provisionally enrolled under the concerned clauses. It also required for trusts already registered to seek a fresh registration upon which approval shall be granted in Form 10AC.

However, because of some technical errors (as accepted by CBDT), Form No. 10AC has been given in FY 2021- 2022 with the heading Order for provisional registration or "Order for provisional approval" rather than "Order for registration" or "Order for approval". The CBDT has now clarified that all these Forms No. 10AC shall be considered as an Order for registration or approval.

Read Notification: 11/2022

2. *CBDT modifies guidelines for search cases' compulsory selection for complete scrutiny:*

CBDT modifies its earlier guidelines dated May 11, 2022 for compulsory selection of returns for complete scrutiny during FY 2022-23. It has bifurcated the search and seizure cases into cases where search/requisition is conducted before Apr 1, 2022 and on or after Apr 1, 2022.

In respect of returns of AY 2021-22 and search conducted post Apr 1, 2022, it has modified the procedure to omit the following, "*Where such cases are not centralised and return of income is filed in response to notice u/s 153C, the Assessing Officer concerned shall serve notice u/s 143(2) of the Act. Where such cases are not centralised and no return of income is filed in response to notice u/s 153C, the Assessing Officer concerned shall serve notice u/s 142(1) of the Act.*"

Read Notification: 51/2022

3. *CBDT notifies 331 as Cost Inflation Index for FY 2022-23:*

CBDT has notified 331 as cost inflation index for FY 2022-23; The Notification comes into force from Apr 1, 2023, thus, applies to AY 2023-24 onwards.

Read Notification: 62/2022

4. *CBDT issues Guidelines under Sec.194R, for deducting tax at source on benefits or perquisites:*

Section 194R was inserted under the Income-tax Act, 1961 providing for deduction of tax at source (TDS) on benefit or perquisite provided in the course of business or profession. TDS under section 194R is applicable with effect from 1st July 2022. This newly introduced section has given rise to certain practical doubts and confusions for the taxpayers as to the applicability of the provisions and the meaning of the terms 'benefits and perquisites'. For removing such difficulties in its implementation, CBDT has issued a set of guidelines for certain specific scenarios.

Read: Detailed SNR Alert

Read Circular: 12/2022

5. *CBDT issues Guidelines under Sec.194S, addresses 6 issues on transactions in Virtual Digital Assets:*

CBDT has issued a circular laying down Guidelines for removing difficulties in implementation of Section 194S i.e. TDS on payment for transfer of virtual digital assets. The Guidelines clear air on numerous vexed issues.

Read: Detailed SNR Alert

Read Notification: 13/2022

COMPLIANCE CALENDAR

Date	Particulars
07-07-2022	Due date for deposit of Tax deducted/collected for the month of June, 2022.
15-07-2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, section 194-IB and section 194-M in the month of May 2022.
15-07-2022	Filing of quarterely statement of TCS collected during April to June 2022.
30-06-2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB and section 194-M in the month of June 2022
31-07-2022	Quarterly statement of TDS deposited for the quarter ending June 30, 2022
31-07-2022	ITR filing for non-audit cases and who have not entered into any international or specified domestic transaction.

Locations

Delhi

A-15, Second Floor, Hauz Khas,
New Delhi- 110016
Tel: +91 11 26856421, 41655801, 26855884
Fax: +91 11 26567540

Pune

Office No. 5,Kalashree Apartment,
Opposite Bank of Maharashtra,
Karve Road,
Pune 411004
Ph: +91 20 25435788

Bangalore

No. 5A, Second Floor, 6th Main, KHB Colony, Basaveshwaranagar,
Bangalore - 560079
Tel: +91 80 42064178

Email: snr@snr.company Website: **www.snr.company**

Disclaimer: