DGA GLOBAL
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Newsletter January 2025
(covering updates for the the month of December)

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REGULATORY UPDATE
INCOME TAX

❖ **CBDT Circular No. 19/2024 dated 16.12.2024**

The Central Government has issued a circular regarding the Direct Tax Vivad Se Vishwas Scheme, 2024 (DTVSV Scheme, 2024) which aimed at resolving pending income tax litigation, reducing disputes, generating timely revenue, and providing taxpayers with peace of mind by avoiding lengthy legal processes. This scheme has received queries from stakeholders. In response, Guidance Note 2/2024 was issued to clarify various aspects of the scheme, answering frequently asked questions (FAQs). The circular clarifies eligibility criteria, the process for filing declarations, and the treatment of specific cases under the DTVSV Scheme, ensuring greater understanding and compliance for taxpayers.

❖ **CBDT Notification No. 128/2024 dated 18.12.2024**

The Central Government, exercising its powers under sub-section (1F) of section 197A of the Income-tax Act, 1961, has issued a notification stating that no deduction of income-tax shall be made under Chapter XVII of the Act on any payments received by the Credit Guarantee Fund Trust for Micro and Small Enterprises, as specified in clause (46B) of section 10 of the Act. This notification is effective from the date of its publication in the Official Gazette.

❖ **CBDT Circular No. 20/2024 dated 30.12.2024**

The Central Board of Direct Taxes (CBDT) has extended the due date for determining the amount payable under the Direct Tax Vivad Se Vishwas Scheme, 2024. The new deadline for determining the amount as per column (3) of the Table in section 90 of the Scheme is now 31st January 2025, instead of the previous date of 31st December 2024.

If a declaration is filed on or before 31st January 2025, the amount payable will be determined according to column (3) of the Table. However, for declarations filed on or after 1st February 2025, the amount payable will be determined according to column (4) of the same Table.

❖ **CBDT Circular No. 21/2024 dated 31.12.2024**

The Central Board of Direct Taxes (CBDT), exercising its powers under section 119 of the Income-tax Act, 1961, has extended the deadline for filing belated or revised income tax returns for the Assessment Year 2024-25. The new deadline for resident individuals is now 15th January 2025, instead of the previous date of 31st December 2024.

❖ **CBDT Notification No. 126/2024 dated 10.12.2024**

The Central Government, in consultation with the Chief Justice of the High Court of Madras, has designated specific courts as Special Courts in Tamil Nadu under the provisions of the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. This decision supersedes a previous notification issued on 21st April 2022 and applies to the respective districts for handling cases related to undisclosed foreign income and assets. The designated courts include the Court of I Additional Chief Metropolitan Magistrate, Chennai, the Court of II Additional Chief Metropolitan Magistrate, Chennai, the Court of Additional Chief Judicial Magistrate, Madurai, the Court of Chief Judicial Magistrate, Coimbatore, and the Court of Chief Judicial Magistrate, Puducherry, each serving distinct regions within Tamil Nadu.

JUDICIAL UPDATES
INCOME TAX CASES

Whether addition on account of Travel Expenses u/s 37 an allowable business expenditure or not

The assessee is engaged in engaged in the real estate business. The assessee incurred expenses on foreign travel to countries such as the USA, Dubai and France to explore business opportunities and establish relations abroad. Under Section 37(1) only those expenses that are incurred "wholly and exclusively" for business purposes are allowable. The onus is on the assessee to substantiate the business nexus of such expenses. In the present case, no documentary evidence, such as agreements, business communications, or other substantiating material, was produced to establish that the foreign travel was undertaken solely for business purposes. The AO also observed that the assessee did not have any branch, office, or operational activities outside India, which could justify the expenditure. The absence of such evidence weakens the claim of the assessee that the expenses were incurred wholly and exclusively for business purposes.

The AR also emphasized that the travel expenses, being only 0.56% of the total turnover, are negligible and proportional to the scale of operations. However, during the hearing, the AR admitted that the directors were accompanied by their spouses on such trips, which introduced a personal element into the travel expenses. The AR agreed to a reasonable disallowance in light of this fact. The judicial precedents relied upon by the CIT(A) further support the disallowance. At the same time, it was recognized that not all travel expenses can be attributed to personal purposes. Based on the AR's submissions and admission, and in the interest of fairness, it was deemed that it reasonable to disallow 30% of the foreign travel expenses to account for the personal element, while allowing the balance 70% as business expenses. Accordingly, it was partly allowed in this ground of appeal.

Whether interest income received on compensation received u/s 28 of the Land Acquisition Act, 1894 characterize as income from other sources or is exempt

The assessee received interest on enhanced compensation on compulsory acquisition of land under the Land Acquisition Act, 1894. The assessee claimed interest as a part of the compensation and exempt from tax u/s 10(37) of the Income Tax Act, 1961 in accordance with the law laid down by the Hon'ble Supreme Court of India in the case of Union of India vs. Hari Singh 302 CTR 458 and CIT vs. Ghanshyam HUF, 2009 (8) SCC 412/315 ITR 1. In assessment proceedings, the Assessing Officer (AO) treated amount of Rs.53,69,890/- awarded to the assessee as interest on enhanced compensation, as income from other sources. Aggrieved by the assessment order, the assessee filed appeal before the CIT(A), but remained unsuccessful. Hence, the assessee filed an appeal in ITAT (Income Tax Appellate Tribunal) - Delhi.

ITAT examined the orders of the authorities below and have considered the decisions on which both sides have placed reliance. The provisions of section 56(2) of the Act were amended by the Finance (No.2) Act 2009 w.e.f 01.04.2010 by way of insertion of clause (viii) to sub-section (2) to section 56.

Prior to insertion of aforesaid Clause the Hon'ble Apex Court in the case of CIT vs Ghanshyam HUF (supra) has held that interest received on compensation/enhanced compensation is part of compensation, hence, exigible to tax u/s. 45(5) of the Act. The Hon'ble Punjab and Haryana High Court in the case of Mahender Pal Narang vs CBDT, 120 taxmann.com 400 (P&H) after considering amended provisions of section 56(2) of the Act distinguished the decision rendered in the case of Ghanshyam HUF (supra) and held that interest received on compensation or enhanced compensation is to be treated as 'Income from Other Sources' and not under the head 'Capital Gains'. Recently, the Hon'ble Jurisdictional High Court in the case of PCIT vs. Inderjit Singh Sodhi HUF, 161 taxmann.com 301 held that interest whether on compensation or enhanced compensation received on acquisition of land u/s. 28 or u/s. 34 of the Land Acquisition Act, 1894 shall be exigible to income tax as 'Income from Other Sources u/s. 56(2)(viii) of the Act.

In light of recent decisions rendered in the case of Mahender Pal Narang (supra) and Inderjit Singh Sodhi (supra), ITAT found no infirmity in the order of CIT(A), hence, the same is upheld.

In the result, appeal of the assessee is dismissed.

Whether fertiliser subsidy should be treated as capital receipt and not chargeable to tax

The assessee was engaged in the business of manufacturing fertilizers, dyes and chemicals. The assessee filed rectification application after relying on the decision of Hon'ble Supreme Court regarding allowability of subsidy as capital receipt - AO has rejected the application filed by the assessee u/s 154 - CIT(A) held that the fertilizer subsidy received by the assessee in terms of the NBS policy during the year under consideration is not an income and same was treated as capital receipt not chargeable to tax. Identical issue on similar fact in the case of the assessee for A.Y. 2015-16 has been adjudicated by the [2021 (8) TMI 982 - ITAT MUMBAI] in favour of the assessee as held that the scheme was mainly to attract the investment in the industry and the purpose test is that the attraction of new players in the industry and also attracts the existing players to bring new investment. How the benefit of scheme is passed on to the industry matters. Sometime, Govt. introduces direct concession in the investments or introduces mechanism in relation to the ultimate achievement of the objects of the scheme. In this scheme, the ultimate object is to make available the required fertilizers and at appropriate price to the farmers, this can be achieved only by bringing new investments in the industry.

This is a recurring issue in the case of the assessee which has already been adjudicated by the ITAT in favour of the assessee as discussed supra in this order therefore following the decision of the ITAT and other judicial findings as elaborated in the findings of ld. CIT(A) do not find any merit in the appeal of the revenue therefore the same stand dismissed.

Whether gain on land sold which was received in the distribution of assets of the company on account of liquidation is characterised as LTCG or STCG

The assessee was shareholder in the company Carbon Industries Pvt. Ltd., and this company went into liquidation and assets were distributed in its shareholders. The assessee in the

capacity of the shareholder received immovable property on liquidation of the company for extinguishment of his shareholding rights and the said immovable property is sold to outside third party. The capital gains are clearly short term in nature since the said immovable property was acquired by the assessee in the preceding year and therefore the period of holding is less

than three years. AO by going through the provisions of section 2(47) noted that the property received by assessee on liquidation of company is transferred within the provisions of section 2(47) and the provisions of section 46(2) of the Act and treated this holding period by the assessee from 10.12.2012 i.e., the date of release deed by the company to the assessee and sold within one year. It was held that 360 equity shares were held by assessee for last so many years in company which got liquidated and company gave land it was holding.

The assessee along with other shareholders sold his share of property at Thiruvottiyur High Road and received sale consideration on various dates.

ITAT was of the view that the provisions of section 2(42A), Explanation 1 is very clear which explains that when a person received property consequent to liquidation of the company, the period of holding of asset has to be taken from the date of previous owner i.e., company held it. ITAT agree with the contention of the assessee as the Explanation to Section 2(42A) of the Act is very clear and hence, ITAT confirmed the order of CIT(A). The issue of Revenue's appeal was dismissed and profit on sale of land is characterized as LTCG in this case as the property was held for more than 36 months.

Whether compensation received from a company for loss in value of ESOP due to disinvestment not taxable as perquisite

The petitioner was an ex-employee of Flipkart Internet Private Limited (FIPL), a wholly owned subsidiary of Flipkart Pvt. Ltd., Singapore (FPS). In 2012, FPS rolled out an Employee Stock Option Plan (ESOP) called the 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 FPS's stock options fell, and FPS decided to grant the option holders a payment of USD 43.67 per option as compensation for the loss in the value of the options. It was also stated that the FPS would be withholding tax on the compensation, considering it to be 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 could not 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.

NEWS UPDATES

GST collections 7.3% up in December, totaling Rs 1.77 lakh crore

UPI transactions continue upward trajectory, hit all-time high in Dec 2024

IPOs steal the December thunder with 5 multibaggers, 66% average return

Banking liquidity in deficit in December, RBI moves cap call rate

VALUATION BUZZ

Nissan, Honda announce merger, creating world's third-largest carmaker

India is shaping the future of the largest US bank

CBI unearths cyber fraud scam of Rs 117 crore

Cigniti Technologies slips 8% after board approves merger with Coforge

A-One Steels India Flies DTHP for Rs 650 Crore IPO

ABOUT THE FIRM

DGA Global is a multi-disciplinary audit and advisory firm providing gamut of services including audit, income tax, consulting and outsourcing services. We are based in the National Capital Region, Gurgaon, India. The firm is headed by Deepanshu Gupta, Chartered Accountant, having 14 years of experience working in Deloitte and PwC. Deepanshu is also a Cost and Management Accountant having secured 1st rank in North India. He has worked extensively for Indian and global clients serving wide-ranging sector experience in Manufacturing, Engineering, Automobile, IT/ITES/BPO, Real Estate, Investment Management, Mining among others for several years. He is also a Registered Valuer in domain of Securities and Financial Assets (SFA).

OUR TEAM

We are a team of professionals comprising of Chartered Accountants, Company Secretaries, Cost and Management Accountants, Advocates and MBAs who are truly committed in providing timely, professional and quality services to our clients thereby building a long-term relationship with them.

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