



Inside this edition

- No intimation for defect in return u/s 139(9), AO cannot declare the return as invalid
- Partner cannot claim expenses against income received from partnership firm
- CBDT notifies CII for FY 2019-20
- Fiscal Relief to Companies
- Depreciation rates amended for Plant & Machinery
- Due date extended for filing Income Tax Return for AY 2019-20

& more...

DOMESTIC TAX SEGMENT

HIGH COURT RULINGS

CIT-A can confirm, reduce, enhance or annul the assessment. Powers u/s 251 cannot be restricted only to issues raised in appeal before him

Facts



The assessee was engaged in the business of civil contract and the case was selected for scrutiny where the AO made three additions. On the assessee's appeal, the CIT-A deleted the additions made by the AO but enhanced income of assessee by Rs. 26.50 lacs (11.50 Lacs being 50% of wage expenses claimed in P&L account and 15 lakhs being 50% of sundry creditors appearing in balance sheet). Assessee held that CIT-A did not have the jurisdiction to introduce a new source of income and the assessment was to be confined to those items of income which was subject matter of the appeal. On appeal before the Tribunal, appeal of the assessee was dismissed. On further appeal, the HC set aside the order of both the CIT-A and the ITAT and restored the proceedings for consideration before the CIT-A.

Ruling

Section 251 reveals the power vested with CIT-A in an appeal against an assessment order that he can confirm, reduce, enhance or annul the assessment. In the instant case, the CIT-A had deleted addition made by the AO and has made two new additions on the basis of return filed by the assessee. Thus, there was no new source of income as claimed by the assessee. HC held that the CIT-A has rightly

proceeded to decide the additions as it arose out of the proceedings of assessment. Therefore, the appeal of the assesee was dismissed.

Source: HC of Allahbad in SD Traders vs. CIT

No. 159/2016, date of publication September 3, 2019

ITAT RULINGS

A charitable trust charging fee of not more than the cost of the project for implementing the projects could not be said to be an activity of trade, commerce or business

Facts

The assessee being a charitable society (registered u/s 12AA(1) of the Act) engaged in the activities of upliftment of the poor, providing training and skill development of the poor in rural areas in the backward districts. The assesee was in receipt of grants from CG, SG and various other organizations and was allowed benefit of exemption u/s 11(1) continuously up to AY 2010-11. However, in the AY 2011-12, the assessee was denied exemption by the AO invoking proviso to section 2(15). On appeal, the CIT-A allowed the exemption u/s 11(1) with all consequential benefits. However, the revenue filed an appeal before the ITAT against the order of the CIT-A with a view that the activities of the assesee falls under 'advancement of general public utility', and the assessee was engaged in the business of providing services against a fee.

Ruling

ITAT held that the assessee being engaged in providing services against a fee is an actual cost borne for the projects and is within the



domain of charitable activities. The AO has not brought on record any evidences which could suggest that the activities of the assessee have been carried out with a profit motive. The revenue also could not controvert to the fact that the assessee has not charged any fee from the clients except the cost of project actually incurred. Therefore, the assessee is not engaged in any trade, commerce or business and, thus, mischief of proviso of section 2(15) is not attracted in the case of the assessee and the finding of the CIT-A were upheld.

Source: Delhi Tribunal in DCIT, Delhi vs. Professional Assistance for Development Action (PRADAN)

No. 3662/2015, date of publication September 3, 2019

In the absence of any intimation to the assessee regarding defect in return of income u/s 139(9), the AO cannot declare the return as invalid

Facts

In the course of appellate proceedings, the CIT-A held that the return filed by the assessee without report of an Accountant as prescribed in Form 3CEB required u/s 92E was valid; thus allowed assessee's claim for carry forward of loss claimed in the said return. However, the revenue filed an appeal against the order of the CIT-A.

Ruling

ITAT held that as per the provisions of section 139(9), before declaring any return as invalid the AO is under an obligation to issue notice to the assessee to rectify the defect within a period of 15 days from the date of such intimation. In the present case, however, no

such notice was issued to the assessee by the AO for removing the defects. Thus, the only error committed by the assessee was that the Report from the Accountant in Form 3CEB as required u/s 92E was not filed.

Therefore, after examining the documents filed along with the return of income, **the AO was duty bound to intimate the defect, if any** in the return. In the absence of any such intimation to the assessee regarding the defects, the AO cannot declare the return as invalid. There was no merit in the ground raised by the revenue. The same was dismissed, accordingly.

Source: Pune Tribunal in DCIT, Pune vs. Husco Hydraulics Pvt. Ltd. No. 506/2017, date of publication September 3, 2019

A partner cannot separately claim expenses against income received from partnership firm

Facts

The assessee being an individual is a partner in seven partnership firms from which he was earning income by way of share of profit, remuneration and interest on the capital invested by him in the firms. During the assessment proceedings claimed that he had incurred an expense of Rs. 5.67 lacs against the income received from the partnership firm. As per the assessee, he had employed two persons, one was looking after managerial work and the other one was doing petty work in the capacity of the peon. Accordingly, the assessee claimed that he was eligible for claiming the deduction of such expenses against the income received from the partnership firms. The AO was of the view that such expenses as claimed by the assessee were incurred to meet his personal requirement. Therefore, the same

could not be allowed as deduction against his income. Thus, the AO disallowed the same and added to the total income of the assessee. On appeal, the CIT-A affirmed the order of the AO.

Ruling

Held that, the assessee can claim the expenses against the impugned income if it has been incurring such expenses to generate such income. However, the assessee being a partner in the firm is acting in the representative capacity meaning thereby that if the partner has incurred any expense in connection with the business of the firm, then the firm is entitled for the deduction of such expenses subject to the provisions of the Act. Thus, if the assessee has incurred any expense on behalf of the partnership firm then the right course of action is to claim the reimbursement from the partnership firm and such firm will claim the deduction under the relevant provisions of the Act on account of such reimbursement of expenses. Thus, the assessee cannot claim any expense against the income from the firm also the share of profit received by the assessee from the firm is exempted u/s 10(A), and there is no occasion to claim any expense against such exempted income. Therefore, the appeal of the assessee was dismissed.

Source: Ahmedabad Tribunal in Chandra N. Jethwani vs. ITO

No. 1129/2017, date of publication September 30, 2019

CIRCULARS & NOTIFICATIONS

CG notifies Cost of Inflation Index (CII) for the FY 2019-20



In exercise of the powers conferred u/s 48(v) of the Income Tax Act, 1961, **CBDT notifies CII for the FY 2019-20 as '289'**. The said notification shall come into force w.e.f April 1, 2020 and shall apply to AY 2020-2021 and onwards.

Source: Notification No. 63/2019, dated September 12, 2019

Amendment to Rule 2F of the Income Tax Rules, 1962

Rule 2F of the Income Tax Rules, 1962 states the Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption u/s 10(47) of the Income Tax Act, 1961, under which sub rule 5 states that In case of an **investor being a non-resident, the original or initial maturity of bond, at time of first investment by such non-resident investor, shall not be less than a period of five years**.

In the said notification CBDT has omitted sub-rule 5 in Rule 2F of the Income Tax Rules, 1962. These rules may be called the Income Tax (7th Amendment) Rules, 2019

Source: Notification No. 66/2019 dated September 16, 2019

Depreciation rates amended relating to Tangible Assets for Machinery & Plant

The CBDT amends the Income Tax Rules which shall be called the Income Tax (9th Amendment) Rules, 2019 in view to amend the Depreciation rates u/s 32 of the Income Tax Act, 1961 here as under:

S.No.	Block of Assets	Depreciation allowed as per the percentage

		of WDV
1	Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April, 1990 except those covered under entry (ii)	15
2	a) Motor buses, motor lorries and motor taxis used in a business of running them on hire other than those covered under entry (b)	30
3	(b) Motor buses, motor lorries and motor taxis used in a business of running them on hire, acquired on or after the 23rd day of August, 2019 but before the 1st day of April, 2020 and is put to use before the 1st day of April, 2020.	45

Source: Notification No. 69/2019 dated September 20, 2019

Amendments made in the Income Tax Act, 1961, providing fiscal relief to companies

The Government has brought in the Taxation Laws (Amendment) Ordinance, 2019 to make the following amendments in the Income-tax Act, 1961 and the Finance Act, 2019 in order to provide Fiscal Reliefs to New Domestic Manufacturing Companies:

- In order to promote growth and investment, any domestic company w.e.f., FY 2019-20 has an option to pay Income Tax @ 22% subject to the condition that it will not avail any

exemption/incentive. The effective rate shall be 25.17% inclusive of surcharge & cess and shall also not be required to pay MAT.

- With a view to attract fresh investment in manufacturing and provide a boost to 'Make-in-India' initiative, **New Domestic companies incorporated on or after October 1, 2019 making fresh investment in manufacturing has an option to pay Income Tax @ 15%.** The company shall not avail any exemption/incentive and should commence production on or before March 31, 2023.
- The companies which do not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate and can opt for the concessional tax regime after expiry of the tax holiday/exemption period.
- For the companies who continue to avail exemptions/incentives, **the rate of MAT has been reduced from existing 18.5% to 15%.**
- **The enhanced surcharge introduced by the Finance Act, 2019 shall not apply on capital gains arising on sale of equity share in a company or a unit of an equity oriented fund or a unit of a business trust liable for STT in the hands of an individual, HUF, AOP, BOI and AJP.** It shall also not apply to capital gains arising on sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs).

Source: CBDT Press Release dated September 20, 2019

Condonation of delay in filing of Form 10B for the years prior to AY 2018-19

As per Rule 17B of the Income-tax Rules, 1962, the audit report of the accounts of a trust or a charitable institution is required to be furnished in Form 10B. The failure to furnish such report in the

prescribed form along with the return of income results in disentitlement of the trust from claiming exemption u/s 11 and 12 of the Income Tax Act, 1961. However, the CBDT was requested to condone the delay in filing of Form 10B for the years prior to AY 2018-19. Therefore, in supersession of Circular 10 dated May 22, 2019, the **due date for filing Form 10B for the years prior to AY 2018-19 has been extended from 30th September, 2019 to 31st March, 2020.**

Source: CBDT Circular No. 28/2019 dated September 27, 2019

Due date extended for filing Income tax return for AY 2019-20 for assessees liable for Tax Audit



The due date for filing the Income tax return for the taxpayers liable for audit is 30th September, 2019 for AY 2019-20. However, in view of the limited time available with the tax professionals for audit and floods in certain parts of the country, the CBDT has extended the due date for the filing the return of income along with audit report from 30th September, 2019 to **31st October, 2019**. However, there shall be no extension of the due date for purpose of Explanation 1 to section 234A (interest for defaults in furnishing return) of the Act and the assessee shall remain liable for payment of interest as per provisions of section 234A of the Act.

Source: CBDT Order 225/157/2019 dated September 27, 2019

Amendment to Rule 37BA for the purposes of section 194N of the Income Tax Act, 1961

For the purposes of section 194N, where TDS is required to be deducted @ 2% for cash withdrawals of more than Rs 1 Crore in a FY, CBDT has inserted a sub rule in Rule 37BA of the Income Tax Rules, 1962 which shall come into effect from September 1, 2019 stating that for the **credit of such TDS u/s 194N shall be given to the person from whose account tax is deducted and paid to the CG account for the AY relevant to the PY in which such tax deduction is made.**

Source: Notification No. 74/2019 dated September 27, 2019

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