SNR & COMPANY
CHARTERED ACCOUNTANTS

INCOME TAX BULLETIN

APRIL 2023

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JUDICIAL UPDATES

1. Depreciation cannot be claimed on Toll Roads & Bridges

Case of : L & T Infrastructure Development Projects Limited Vs ACIT
Decision by : High Court, Madras
In favour of : Revenue

- In a batch of 10 appeals involving L&T group companies, HC formulated questions on the correctness of ITAT order in allowing depreciation by classifying the toll road and bridge as a 'plant' or 'building' and whether concessionaire right can be considered as an intangible asset.

- Assessee-Companies are conceived and incorporated as Special Purpose Vehicles (SPV) for the purpose of construction, operation and maintenance of the respective toll bridges and roads under Build Operate & Transfer (BOT) Scheme and Concessionaire Agreements were entered into between the respective Assessee with the Government of India and Government of Gujarat.

- HC analyzed the provisions of Section 32 as also the CBDT Circular No. 9/2014 wherein it was clarified that an assessee does not hold any rights in the project except recovery of toll fee to recoup the expenditure incurred, thus, it cannot, therefore, be treated as an owner of the property, either wholly or partly, for purposes of allowability of depreciation under Section 32(1)(ii). The court opined that although CBDT Circular is not binding on the court, it correctly clarified the legal position.

- HC highlighted that the expression ‘building’ has not been defined in the Act and Part A of Appendix 1 merely specifies types of buildings Machinery & Plants. It observed that neither a 'Toll Road' nor a 'Toll Bridge' is either a 'Plant' or a 'Building'. The court further explained that to claim depreciation, the respective assessee ought to have been the owner of the respective toll roads/ toll bridges. Public properties such as “Toll Roads” and “Toll Bridges” on State/National Highways are never intended to be transferred at any point of time to the person with whom a concessionaire agreement is signed.

Full Judgement : L & T Infrastructure Development Projects Limited

SNR's Take

The Court has reiterated the observations made by various judicial authorities in such matter as well as the text of the CBDT Circulars. The roads and bridges are public properties, and their ownership never vests with the companies authorized to collect toll fess to recoup their expenses. Thus, the primary condition of 'ownership' for claiming depreciation is not fulfilled.

2. Sec.50C inapplicable on transfer arising from compulsory acquisition by Government:

Case of : PCIT vs The Durgapur
Decision by : High Court, Calcutta
In favour of : Assessee

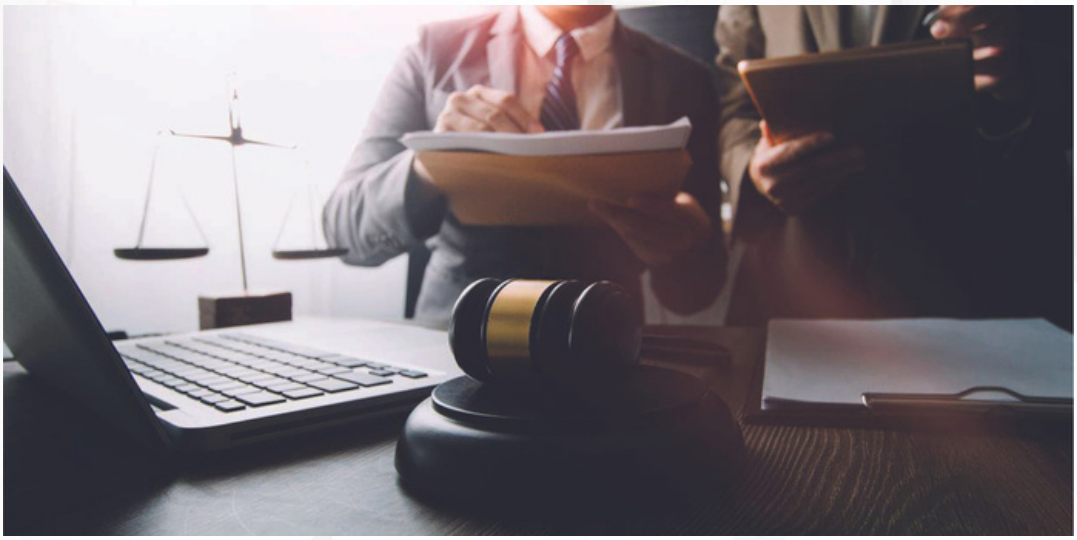
- Assessee-Company, for AY 2015-16, received compensation of Rs.4.48 Cr on compulsory acquisition of land from NHAI under the Land Acquisition Act, 2013 whereby the Revenue made the addition of Rs.5.45 Cr as a capital gain on transfer of land by adopting the sale consideration as per stamp duty valuation of the said land at Rs.9.95 Cr by invoking Section 50C.

- On Assessee's appeal, CIT(A) held that Revenue was not justified in invoking Section 50C on compulsory land acquisition and directed the Revenue to re-compute the capital gains without applying Section 50C. ITAT confirmed the CIT(A), aggrieved with which Revenue preferred the present appeal.

- HC observed that in the case of compulsory land acquisition by the Government, there is no room for suppressing the actual consideration received on such acquisition, unlike the transaction between the private parties. Further observed that it is common knowledge that when compensation is determined by the authorities under the Land Acquisition Act, 2013, it is invariably lesser than the market value of the property as the determination is done in a particular manner by taking note of several factors.

- Thus, the court opined that since it is a case of compulsory acquisition of land by the Government, the Revenue cannot say that there was suppression of the value and consequently the question of invoking Section 50C does not arise.

- The court further placed on record that the provisions of Section 50C shall be applicable only in cases where transfer of the capital asset has to be affected upon payment of stamp duty, since it provides for adoption of value of the property adopted by the stamp authority. In case of compulsory acquisition, the transfer of property takes place by operation of law and the provisions of the Transfer of Property Act, or the Indian Registration Act do not apply, thus the question of payment of stamp duty also does not arise to such transfers.



Full Judgement: The Durgapur Projects Limited

SNR's Take

The court has delivered a wonderful judgement clarifying the scope of Section 50C and its applicability on compulsory acquisition transactions. Hyderabad ITAT in Southern Steel has also ruled that section 50C was introduced to curb the menace of unaccounted cash being infused in the real estate transaction which is not possible in a transaction of compulsory acquisition by

3. TDS credit can be allowed where corresponding income not offered to tax

Case of : The ITO Vs Adani Vizhinjam Port Pvt. Ltd
Decision by : ITAT, Ahmedabad
In favour of : Assessee

- Assessee-Company filed return of income for AY 2017-18 declaring nil income and claimed refund of Rs.3.08 Cr on interest income duly capitalized in books of accounts and advanced against funded work shown under the head 'other liabilities'.

- Revenue denied the refund of Rs.3.08 Cr due to alleged mismatch in credit of TDS claimed and income offered to tax in the year under consideration.

- CIT(A) allowed Assessee's appeal and held that even if the income earned by the Assessee had not been offered to tax being not liable for tax, the benefit of TDS credit cannot be denied.

- Before ITAT, Assessee contended that interest income was indirectly offered to tax as the said income was deducted from the cost of capital work in progress, accordingly, the TDS credit was rightly allowed by CIT(A).

- ITAT relied on coordinate bench ruling in **Arvind Murjani Brands** wherein it was held that where an amount on which tax was deducted at source is not at all chargeable to tax, then TDS credit shall be allowed in the year in which tax was deducted at source. The court further relied on coordinate bench ruling in **Supreme Renewable** wherein it was held that when a particular income is received by Assessee after deduction of tax and the said TDS was deposited with the Government along with the certificate, then the Assessee would be entitled to claim TDS credit even if the corresponding income was not liable to tax.

- Accordingly, the tribunal relied on the aforesaid rulings and observed that Section 199 enables the Assessee to claim TDS credit in the year in which it is deducted irrespective of the fact that the related income is not offered to tax in the same year. Thus, finds no infirmity in CIT(A) order.

Full Judgement: Adani Vizhinjam Port Pvt. Ltd

SNR's Take

The tribunal has delivered a significant judgement that shall go a long way in resolving disputes arising out of application of Sec 199 that allows for credit of TDS only in the AY in which income has been offered for tax. However, where income could not be offered due to non-completion of contract or in case of income not at all taxable, TDS can be claimed in the year in which it was deducted.

4. Online database subscription fee not taxable as royalty as no copyright of literary, artistic or scientific work was made available

Case of : Uptodate Inc Vs DCIT
Decision by : ITAT, Delh
In favour of : Assessee

- For AY 2016-17, Revenue observed that Assessee, a US-based company, received Rs.3.52 Cr. from Indian customers for providing access to an online database, which was not offered to tax and held the same to be taxable as royalty under Section 9(1)(vi) as well as Article 12(3) India-US DTAA on the ground that the Assessee has transferred the right to use of a copyright, which was confirmed by CIT(A).

- On appeal, ITAT noted that the activities of the Assessee included collating data relating to healthcare as available in the public domain and putting them in one place by creating a database, and stated that "*The only improvement the assessee has made in the database is like analysis, indexing, description, appending notes for facilitating easy access to the customers.*"

- The tribunal further noted that as per terms of the subscription agreement, customers are only granted access to the contents of the database, but they are not permitted to copy, print, reproduce, modify, translate, adapt, or create derivative works based upon the licensed products. Further, all the rights, titles, and interests with respect to the licensed products, including all copyrights and other intellectual property rights under United States of America and international laws treaties, remain with the Assessee.

- Thus, the tribunal opined that the Assessee cannot be said to have transferred right to use of any copyright of literary, artistic or scientific work or any other secret formula or process or information concerning industrial, commercial, scientific experience, in accordance with the definition of royalty provided under Article 12(3) of India-US DTAA.

- Thus, only limited right of access to the database was granted to customers on subscription basis, which cannot be characterised as Royalty under Article12(3).

Full Judgement: Uptodate Inc.

SNR's Take

The tribunal has rightly held that subscription services cannot be equated with Royalty as no license in relation to the data being accessed is transferred to the users.

5. TDS cannot legalise ‘consultancy’ payments to Doctors:

Case of: : Boston Scientific India Pvt. Ltd Vs DCIT
Decision by: ITAT, Delhi
In favour of : Revenue

- Assessee-Company is engaged in the promotion, marketing, sales and distribution in India of a wide range of cardio products (such as coronary stents, pacemakers etc.) and related medical instruments and devices manufactured by Boston Scientific Group and also provides related post-sales support services.

- For AY 2016-17, Revenue framed assessment order making additions for (a) Disallowance of consulting and traveling expenses paid to Doctors and Medical Practitioners under Section 37(1), (b) Disallowance of depreciation on medical equipment, and (c) Disallowance of expenses incurred for clinical trials.

- On the first issue, ITAT examined the invoice-cum-report of various doctors, addressed to Assessee’s sales manager intimating the performance of rotablation technique and opined that the consulting expenses, traveling, boarding & lodging expenses, reimbursement to doctors are an indirect way of gifting the doctors to promote the products.

- The tribunal rejected Assessee’s stand that a consultancy agreement was entered into with the Doctors for providing consultancy/ advisory services to the Assessee, by assisting Assessee in assessing and evaluating its latest methodologies and products, attending meetings specified by Assessee or organizing domestic/international lectures, training at seminars for Assessee’s employees and/or fellow healthcare professionals and due taxes were also deducted.

- The tribunal finally remarked that *"The agreement and deduction of TDS cannot give credence that the incentives received by the doctors is in fact a deductible expense in the hands of the assessee."* and held that the payments made by the Assessee to the Doctors in a different form as training and consultancy is another form devised to camouflage the real purpose which has been rightly disallowed by Revenue.

Full Judgement: Boston Scientific India Private Limited

SNR's Take

The Tribunal has left no unambiguity in holding that amounts paid as perquisites and benefits to medical professionals in whatever form and manner cannot be allowed as deduction even if TDS has been deducted on the same.

6. Sale of property held with commercial intent taxable as business income, Sec. 50C inapplicable

Case of : A. Jesu Rajendran Vs Income Tax Officer
Decision by : ITAT, Chennai
In favour of : Assessee

- Assessee-Individual, sold a property for consideration of Rs.95 Lacs and received Rs. 45 lacs in FY 2006-07, which was offered to tax as business receipts. The balance amount of Rs. 48 lacs was not shown as income as this amount was due from purchasers and assessee claimed to have followed cash system of accounting. Revenue noted that the stamp value of the said property was Rs. 3 Cr and assessed the profit derived from transfer of property under the head of short term capital gains by invoking Section 50C and determined short term capital gain at Rs.2.39 Cr, which was confirmed by the CIT(A).

- On appeal, ITAT noted Assessee's argument that the property was purchased and shown as stock in trade in the books of accounts. The tribunal dismissed revenue's argument that the income is assessable under the head of capital gains since the assessee did not invest any amount for development of the property and observed that non-development of property during the period, when the property was held, does not decide the nature and head of income under which profit derived from transfer of said property is assessable.

- The tribunal explained that the nature and head of income on a particular receipt is dependent on the intent of the Assessee and the treatment given in the books of accounts for the relevant AY.

- The tribunal further observed that the land in question is situated in the location adjacent to Bangalore International Airport, where there is a lot of scope for commercial exploitation of property. It pointed out that the Assessee has filed necessary evidence, including financial statement for the relevant AYs to prove its claim that property has been shown as stock in trade in the books of accounts and tax audit report to prove that amount received from transfer of property has been treated as business receipts.

- Thus, the tribunal held that the profit derived from transfer of property are to be assessed under the head profit and gains of business and profession.

- On applicability of Section 50C, ITAT observed that if the property transferred by the Assessee is a stock in trade and not a capital asset, then section 50C is not applicable.

Full Judgement: [A Jesu Rajendran]

SNR's Take

The Tribunal has given a reasonable judgement wherein the nature of immovable property was examined given the specific facts. A property cannot be regarded as a capital asset merely on the fact that no development was done for the same. The intention of the assessee as well as its treatment in books of accounts shall hold prominence in determining its nature.

CIRCULARS/NOTIFICATIONS:

1. CBDT amends ITR form for AY 2023-24 for the second time:

CBDT notified ITR forms for AY 2023-24/ FY 2022-23 except ITR-7 vide **Notification No. 04/2023-Income Tax** dated 10-02-2023 and notified ITR-7 vide **Notification No. 05/2023- Income Tax** dated 14-02-2023. Further, CBDT amended notified ITR forms. first time vide **Notification No. 8/2023-Income Tax dated 28-02-2023.** Now the CBDT has again amended the same for the second time vide corrigendum Notification No. 11/2023-Income-Tax dated 3 rd March, 2023 to require certain additional details in relation to disclosure of deductions claimed from income under head capital

Read Notification: 11/2023

2. Manual submission of Form 10F allowed till 30th September 2023:

The Directorate of Income Tax (Systems) issued a Notification No. 03/2022 dated 16 th July 2022, mandating furnishing of Form 10F electronically by the taxpayers. However, some non-resident taxpayers who did not have a PAN and were not required to have one were facing practical challenges in complying with this requirement.

As a result, the competent authority has decided to partially relax the rule and exempt such non-resident taxpayers from the mandatory electronic filing of Form 10F until September 30, 2023. This means that these taxpayers can continue to file Form 10F in manual form until September 30,

Read Circular: 3/2022 (System)

3. CBDT notified the list of consequences that will apply to a Person if his PAN becomes inoperative:

CBDT has substituted Rule 114AAA to notify consequences that shall apply if a Permanent Account Number ("PAN") becomes inoperative due to non-linking with Aadhaar. The consequences include no refund, no interest payable on refunds, and higher tax deductions/collections.

Read Circular: 15/2022

COMPLIANCE CALENDER:

DATE	PARTICULARS
14-04-2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M and 194S in the month of February 2023.
15-04-2023	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2023.
30-04-2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB, section 194M and section 194-S in the month of March 2
30-04-2023	Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2023.

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CHARTERED ACCOUNTANTS

SNR is a firm of Chartered Accountants offering assurance, tax, accounting and consulting services to its national and international clients across the globe. The firm has its head office at New Delhi with branches at. Pune & Bengaluru. SNR has experienced a considerable growth since its inception in 1996 and is empanelled with reputed banks and with the office of the comptroller and auditor general of India The firm through its team of experts consisting of Chartered Accountants, Company Secretaries and Management professionals provides professional services to a large number of clients viz. Companies, Banks and NGOs etc.

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