SNR & COMPANY
CHARTERED ACCOUNTANTS

INCOME TAX BULLETIN

JANUARY 2025

Delhi, Pune, Bangalore

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1. Compensation received for Compulsory Retirement Services taxable as Salary u/s 17(3)(i):

Case of : Shivabasappa Kariyappanavar Vs ITO
Decision by : ITAT, Bangalore
In favour of : Revenue
Date of Judgement : 13th December 2024

Facts:

- The Assessee received a severance compensation of ₹19.45 lakhs under a Compulsory Retirement Service (CRS) scheme, which was claimed as a capital receipt not liable to tax in the return of income. However, the Revenue treated the amount as taxable under the head "Salaries," invoking the provisions of Section 17(3)(i) of the Income-tax Act, 1961. The employer had deducted tax at source (TDS) on the compensation, treating it as part of salary under Section 192.

Issue:

- Whether the severance compensation received by the Assessee qualifies as "Profit in lieu of Salary" under Section 17(3)(i) of the Act.
- Whether the Revenue's treatment of the compensation as taxable under the head "Salaries" was appropriate.

Tribunal's Observations:

- **Applicability of Section 17(3)(i):**

1. The Tribunal noted that the term "Profit in lieu of Salary" explicitly includes compensation due to or received by an Assessee from an employer or former employer, especially in connection with the termination of employment.
2. The statutory provisions are unambiguous in charging such compensation to tax under the head "Salaries."

- **Employer-Employee Relationship**

1. It was observed that the severance compensation was related to the employer-employee relationship and was received at the time of termination.
2. The Tribunal emphasized the distinction between payments related to employment and those unrelated to it.

- **Case Law Analysis:**

1. Relied on the Supreme Court's decision in E.D. Sheppard, which clarified that compensation for termination of employment, whether voluntary or under legal obligation, is taxable as "Profit in lieu of Salary."
2. Referred to the Karnataka HC judgment in Surendra Prabhu, which emphasized a broad interpretation of "Profit in lieu of Salary."

- **Rejection of Assessee's Reliance:**

1. The Tribunal rejected the Assessee's reliance on contrary decisions, including those of the Delhi HC (Sharda Sinha) and coordinate benches (Padma Rao and Sudhakar Ratan Shanker Gautam), observing that they were distinguishable on facts.

ITAT's Decision:

- The Bangalore ITAT upheld the Revenue's action, ruling that the severance compensation of ₹19.45 lakhs was taxable under the head "Salaries" as "Profit in lieu of Salary." It dismissed the Assessee's appeals, confirming the validity of the TDS deduction and inclusion of the amount in taxable income.

Full Judgement: Shivabasappa Kariyappanavar

SNR's Take

This case reaffirms that the statutory provisions under Sections 15 and 17 are clear and leave no ambiguity in taxing compensation related to termination of employee when the employer-employee relationship is clear.

2. Receipts from cloud-native machine data analytics solution, not FTS:

Case of : Sumo Logic, Inc. Vs ACIT
Decision by : ITAT, Delhi
In favour of : Assessee
Date of Judgement : 27th December 2024

Facts:

- The Assessee, a US-based entity, operates a cloud-native machine data analytics platform that enables organizations to address challenges related to digital transformation, modern applications, and cloud computing. The platform automates data collection, ingestion, and analysis to provide actionable insights.

- During assessment, the Revenue concluded that the income received by the Assessee from Indian customers (₹14.09 Cr) constituted Fees for Technical Services (FTS) under the Income-tax Act, 1961 and Article 12 of the India-US DTAA. The Revenue observed that this income had not been effectively taxed in either India or the US and treated it as consultancy income, thereby making an addition of ₹14.09 Cr. The Dispute Resolution Panel (DRP) confirmed this addition, prompting the Assessee to file an appeal before the Delhi ITAT.

Issue:

- Whether the income earned by the Assessee from Indian customers qualifies as FTS under the India-US DTAA.
- Whether the income is taxable in India under the provisions of the Income-tax Act or the DTAA.
- Determination of TDS credit and verification of refund claims.

Tribunal's Observations:

- The ITAT relied on the coordinate bench decision in Coursera Inc., which held that subscription fees received for providing a global online learning platform do not qualify as FTS or royalty because the Assessee does not provide technical knowledge or expertise directly to customers.

- Similarly, the receipts in the present case did not involve the provision of technical knowledge, skills, or experience to customers or grant of rights to use copyrights or equipment.

- Under Article 12(4) of the India-US DTAA, the income did not qualify as FTS or royalty as it did not involve making technical knowledge "available" to Indian customers.

- The Assessee demonstrated that the income earned in India was offered as business income in the US as per the Tax Residency Certificate.

Final Decision

- ·The ITAT ruled in favour of the Assessee, holding that the income earned from Indian customers did not qualify as FTS under Article 12(4) of the India-US DTAA. The addition of ₹14.09 Cr by the Revenue was deleted.

Full Judgement: Sumo Logic, Inc.

SNR's Take

The decision reinforces that the scope of FTS under DTAA provisions requires a direct transfer of technical knowledge or skills, distinguishing service-based models like cloud platforms. Payments for subscription-based cloud or software services do not automatically qualify as FTS unless technical knowledge is directly "made available" to customers.

3. Explanation 2 to Sec. 263 does not confer unchecked power for revision:

Case of : Rakesh Kumar Doshi Vs PCIT
Decision by : ITAT, Jodhpur
In favour of : Assessee
Date of Judgement : 23rd December 2024

Facts:

- The Assessee filed a return of income for AY 2018-19, declaring a total income of ₹53.97 lakh, which included a deduction of ₹72.53 lakh under Section 57 of the Income-tax Act, 1961. The Revenue issued a show-cause notice to verify the nexus of the deduction with income from other sources.
- In response, the Assessee provided details of its income sources, including:

  1. Interest, remuneration, and share of profit from a partnership firm.
  2. Interest on FDRs and loans given to parties.
  3. Salary income from Excel Debt Broking Pvt. Ltd.
  4. Income from share trading.
- The AO, after conducting detailed inquiries, disallowed ₹48.94 lakh out of the deduction claimed and thus only allowed ₹23.58 lakh. Subsequently, the PCIT invoked revisionary jurisdiction under Section 263, asserting that the AO allowed excess deduction of ₹23.58 lakh without adequate inquiry, rendering the assessment order erroneous and prejudicial to Revenue. The Assessee appealed against the PCIT's order.

Issue:

- Whether the PCIT was justified in invoking jurisdiction under Section 263 to revise the AO's assessment order.
- Whether the AO had conducted adequate inquiries and applied a plausible view while allowing a partial deduction under Section 57.

ITAT's Observations:

- The ITAT noted that the Assessee's case was specifically selected for scrutiny to examine the deduction under Section 57. The AO thoroughly investigated the matter, disallowing ₹48.94 lakh of the deduction and allowing ₹23.58 lakh based on the Assessee's submissions, which demonstrated a direct nexus with income from other sources.

- The ITAT emphasized that the AO's assessment order was based on detailed inquiries and a plausible view.
- Invoking Section 263 requires a clear demonstration of error in the assessment order, which was absent in this case.
- The Tribunal relied on the Mumbai ITAT ruling in Narayan Tatu Rane, which clarified that Explanation 2(a) to Section 263 does not grant the PCIT unfettered powers to revise orders solely on subjective opinion without substantiating that the AO failed to make necessary inquiries.
- The ITAT opined that Explanation 2 must be applied judiciously, respecting the AO's quasi-judicial role.
- The Tribunal found no erroneous assumption of facts or misapplication of law by the AO. The deduction of ₹23.58 lakh was allowed after a due and proper process.

Final Decision:

- The ITAT quashed the PCIT's revisionary order under Section 263, holding that the AO had exercised due diligence and passed a valid assessment order under Section 143(3). The Assessee's appeal was allowed.

Full Judgement: Rakesh Kumar Doshi

SNR's Take

Explanation 2 to Section 263 does not grant the PCIT unrestricted powers to revise every order based on subjective opinions. An assessment order passed after detailed inquiries and application of a plausible view cannot be revised under Section 263 without evidence of error.

4. Loss on forex loan repayment for business expansion allowable u/s 37(1):

Case of : Sundram Fasteners Ltd Vs The ACIT
Decision by : ITAT, Chennai
In favour of : Assessee
Date of Judgement : 08th November 2024

Facts:

- During AY 2015-16, the Assessee claimed a foreign exchange fluctuation loss of ₹86.33 lakh on the acquisition of indigenous assets and a deduction of ₹4.32 crore towards interest on foreign currency loan taken for acquiring capital assets. Both claims were disallowed by the Assessing Officer (AO).
- The AO relied on the Supreme Court judgment in M/s Elecon Engineering to conclude that depreciation at 15% on such assets was allowable, resulting in a disallowance of ₹73.38 lakh.

Issue:

- Whether the foreign exchange fluctuation loss on a loan for acquiring indigenous fixed assets is allowable as revenue expenditure under Section 37(1).
- Applicability of Section 43A regarding foreign currency loans for acquisition of indigenous assets.

ITAT's Observations:

- ITAT relied on the Supreme Court judgment in Wipro Finance Ltd. and the coordinate bench ruling in Alchymar's ICM SM P. Ltd. Section 43A does not apply since the loan was for acquiring indigenous assets, not imported ones.
- ITAT relied on the SC judgment in Woodward Governor. The deduction was shown correctly as forex loss in the profit and loss account, making it allowable as revenue expenditure under Section 37(1).

Full Judgement: [Sundaram Fasteners Ltd Vs The ACIT]

SNR's Take

Foreign exchange fluctuation loss on loans for acquiring indigenous assets is allowable as revenue expenditure under Section 37(1). Section 43A applies only to imported assets; indigenous asset acquisitions are outside its scope.

5. Transfer expenses allowed for computation of capital gains on slump sale u/s 48 r.w.s 50B:

Case of : DCIT Vs Larsen and Toubro Ltd
Decision by : ITAT, Mumbai
In favour of : Assessee
Date of Judgement : 20th December 2024

Facts:

- The Assessee, **Larsen and Toubro Ltd.**, entered into a business transfer agreement for the transfer of its Ready-Mix Concrete Business Undertaking as a going concern via slump sale. The transfer was conducted for a lump sum consideration without assigning individual values to assets and liabilities, as defined under **Section 2(42C)** of the Income Tax Act. The dispute arose over whether transfer expenses amounting to ₹27.07 crore, incurred in connection with the slump sale, could be claimed as a deduction under **Section 48** read with **Section 50B.**

- The Assessing Officer (AO), during reassessment, determined a capital gain of ₹50.11 crore under **Section 50B**, disallowing the deduction of transfer expenses. The Commissioner of Income Tax (Appeals) [CIT(A)] allowed the deduction, leading to the Revenue filing an appeal before the ITAT.

Issue:

- Whether transfer expenses incurred in a slump sale are allowable as a deduction under Section 48(i) while computing capital gains under Section 50B.
- Whether the exclusion of such expenses contradicts the statutory provisions and legislative intent.

ITAT Observations:

- ITAT examined Section 2(42C), which defines a slump sale as the transfer of one or more undertakings for a lump sum consideration, without attributing specific values to individual assets and liabilities.

- ITAT highlighted that Section 50B governs the taxation of capital gains on slump sales. The capital gains are computed as the difference between the sale consideration and the net worth of the undertaking.

- The term "net worth" is defined in Explanation 1 to Section 50B as the aggregate value of the total assets of the undertaking, reduced by its liabilities.

- ITAT emphasized that Section 48 has two limbs:

  First limb: Deduction for expenditure incurred wholly and exclusively in connection with the transfer.
  Second limb: Deduction for the cost of acquisition and improvement (replaced by "net worth" under Section 50B).

- ITAT opined that while Section 50B excludes indexation and cost improvement for slump sales, it does not exclude transfer expenses under the first limb of Section 48.

- ITAT placed reliance on the Delhi High Court's ruling in Nitrex Chemicals India, which clarified that the computation under Section 50B must adhere to the principles of Section 48. Excluding transfer expenses would render the first limb of Section 48 inapplicable, which would contradict the legislative intent.

- ·TAT rejected the Revenue's argument that only net worth is deductible, as this would undermine the computation provisions under Section 48 and render them partially inapplicable in the context of slump sales.

Final Decision:

- The ITAT upheld the decision of the CIT(A), holding that transfer expenses incurred in connection with the slump sale are allowable as a deduction under **Section 48(i)** for the computation of capital gains under **Section 50B**. Accordingly, the Revenue's appeals were dismissed.

Full Judgement: Larsen and Toubro Ltd.

SNR's Take

This decision reaffirms the principle that all components of Section 48 must be applied, ensuring equitable taxation and preventing revenue-driven interpretations that undermine statutory provisions. The computation of capital gains in a slump sale must strictly adhere to the provisions of Sections 48 and 50B, maintaining the legislative intent.

Circulars/ Notifications:

1. CBDT issued revised Guidelines for Compounding of Offences

Pursuant to Press Release in Oct 2024, CBDT issues Guidelines for Compounding of Offences under the Income-tax Act, in supersession of earlier guidelines and under Section 119 r.w. Explanation to Section 279

Read Circular: 19/2024

2. CBDT extended due date for determining amount payable in Sec. 90 of VsV Scheme, 2024:

CCBDT issues circular No. 20/2024 dated Dec 30, 2024 extending the due date for determining the amount payable as per column (3) of the Table specified in Section 90 of the Direct Tax Vivad Se Vishwas Scheme, 2024 ('the Scheme') from Dec 31, 2024 to Jan 31, 2025.

Read Circular: 20/2024

3. CBDT extended due date for furnishing belated/revised ROI for AY 2024-25 for Individuals:

CBDT vide Circular No. 21/2024 dated Dec 31, 2024 extends the last date for furnishing belated return of income under sub-section (4) of section 139 or for furnishing revised return of income under sub-section (5) of section 139 for the Assessment Year 2024-25 in the case of resident individuals from Dec, 31 2024 to Jan 15, 2025.

Read Notification: 31/2024

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