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INCOME TAX

Assigning jurisdiction to Commissioners (Appeals) under the Black Money (undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015 (BM Act)

The Black Money (undisclosed Foreign Income nd Assets) and imposition of Tax Act,2015 (BM Act) has been enacted to deal with the problems of Black Money in the form of undisclosed Foreign Income and Assets, to provide for imposition of tax on such income and assets held outside India and for matters connected therewith or incidental thereto.

As per section 15 of the BM Act, any person aggrieved with the order passed by Assessing Office under the BM Act , may file an appeal to the Commissioner (Appeals). However Commissioner (Appeals) under the BM Act have not yet been notified and the jurisdiction has also not been assigned to such Commissioner (Appeals).

Consequently, it has been decided by the Board that one of the Commissioner (Appeals) under the Income Tax Act, 1961 in each Pr CCIT Region may be given jurisdiction over the cases assessed under the BM Act.

Central Board of Direct Taxes Audit and Judicial Division, Notification No. –F No. 279/Misc/M-44/2018-(ITJ) dated 16th April 2018

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ECONOMICS:

Strict KYC for digital payments.

RBI imposed strict Know Your Client (KYC) norms on all platforms with a last date of February 28. The official estimates are yet to come in, but most players in the payment business have reported a drop of about 40-45 percent in transactions through digital wallets in the first week of March. Customers have found it convenient to shift to cash rather than complete KYC formalities. So, a cash shortfall along with a drop in digital transactions could have easily resulted in a demand-supply mismatch.

The government or the RBI have not been clear on the matter, but it is becoming increasingly clear the printing of the Rs 2,000 note is being either reduced or stopped. An increase in the circulation of the Rs 200 denomination notes are being undertaken to compensate for it. The idea

is to increase the amount of small denomination notes within the economy so that cash facilitates only the transactional demand of the public and the prevalence of black money is curbed. However, for lower denomination notes ATMs have to be replenished more frequently and this could have given the impression of cash scarcity.

Economics Times Dated: 8th May 2018

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SUMMARY OF IMPORTANT TAX JUDGMENTS:

Unless otherwise stated, the sections mentioned hereunder relate to the Income Tax Act, 1961.

Sr. No	Tribunal/Court	Section/ Area	Nature	Case Law
1.	Supreme Court	Section 5	It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. A taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted.	Mahaveer Kumar Jain Vs. CIT (Supreme Court)
2.	Supreme Court	Sec 17(2)(iii),28(iv),45,48	Law on whether amount received by an employee from redemption of Stock Appreciation Rights (SARs) can be assessed as "perquisite" u/s 17(2) (iii) or as "profits of business" u/s 28 (iv) or as "capital gains" (despite no "cost of acquisition") u/s 45 explained. CBDT Circular No. 710 dated 24.07.1995 considered	ACIT vs. Bharat V. Patel (Supreme Court)
3.	Supreme Court	Sec 145, 4	Bifurcation of lease rentals into interest and loan recovery: An assessee can only be taxed on "real income". The bifurcation of lease rental is not an artificial calculation. Lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. The Guidance Note issued by the ICAI carries great weight. The method of accounting prescribed in such a Guidance Note, in order to compute real income and offering the same	CIT vs. Virtual Soft Systems Ltd (Supreme Court)

			for taxation, cannot be disregarded by the AO unless such action falls within the scope and ambit of S. 145(3) of the IT Act	
4.	ITAT Agra	Sec 195, 40(a)(i),5,9	S. 9(1)(i)/ 40(a)(i): Entire law on whether commission paid by an Indian entity to foreign agents can be said to accrue in India and whether the assessee is obliged to deduct TDS thereon u/s 195 explained. All relevant judgements and CBDT Circulars Nos.7 dated 22.10.2009, 23 dated 23 July 1969, 163 dated 29th May 1975 and 786 dated 7th February 2000 considered	ACIT vs. Manufax (India) S.B.

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Discussion on Judgments – Income Tax

1. It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. A taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted.

The appellant herein, a resident of Jaipur, Rajasthan, having income from business and property, won the first prize of Rs. 20 lakhs in the 287th Bumper Draw of the Sikkim State Lottery held on 20.02.1986 at Gangtok organized by the Director, State Lottery, Government of Sikkim, Gangtok. Out of Rs. 20 lakhs, the appellant herein received Rs. 16,20,912/- through two Demand Drafts for Rs. 8,10,000/- and Rs. 8,10,912/- each, after deduction of Rs. 2 lacs being agent's/seller's commission and Rs. 1,79,088/- being Income Tax under the Sikkim State Income Tax Rules, 1948.

The appellant herein filed Income Tax Return for the Assessment Year (AY) 1986-87 disclosing the income from lottery at Rs. 20 lakhs and deducting the agent/seller commission of Rs. 2 lakhs out of the same. He claimed deduction under Sec. 80 TT of the IT Act on Rs 20,00,000/- i.e the gross amount of the prize money won in the lottery in accordance with the provisions of the charging Section.

On scrutiny, the Assessing Officer (AO), allowed the deduction under Section 80TT of the IT Act on Rs. 18 lakhs instead of Rs. 20 lakhs while holding that the Government of Sikkim, had deducted the tax at source from the lottery amount of Rs. 18 lakhs as Rs. 2 lakhs have been paid to the agent directly. In other words, under the relevant provisions of Section 80TT of the IT Act, the deduction can be claimed only on net income out of lottery and not on the gross income.

The Supreme court held that:

i. While Section 5 of the IT Act would not be applicable, the existing Sikkim State Income Tax Rules, 1948 would be applicable

ii. under the relevant provisions of Section 80TT of the IT Act, the deduction can be claimed only on net income out of lottery and not on the gross income

(Mahaveer Kumar Jain vs. CIT)

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2. **Law on whether amount received by an employee from redemption of Stock Appreciation Rights (SARs) can be assessed as "perquisite" u/s 17(2) (iii) or as "profits of business" u/s 28 (iv) or as "capital gains" (despite no "cost of acquisition") u/s 45 explained. CBDT Circular No. 710 dated 24.07.1995 considered.**

Respondent Bharat V. Patel - was employed as the Chairman cum

Managing Director of the (P&G) India Ltd which is the the subsidiary of (P&G) USA through Ri chardson Vicks Inc. USA and that (P&G) USA owned controlling equity. It is an undisputed fact that the Respondent was working as salaried employee. The (P&G) USA was the company who had issued the Stock Appreciation Rights (SARs.) to the Respondent without any consideration f rom 1991 to 1996. Thesaid SARs were re deemed on 15.10.1997 and in lieu of that the Respondent received an amount of R s 6,80,40,724/from(P&G) USA. On 10.09. 1998, the Respondent, filed his income ta x return for the Assessment Year 1998-99 and declaring the total income at Rs 40,13,820/. The Assessing Officer determined the total income of the Respondent at Rs.7,23,11,013/- against the declared income. The Matter of case is the treatment of difference amount 6,80,40,649 as a perquisite u/s 17(2) or as a business income u/s 28(iv) or as a capital gain.

The Tribunal has treated the amount received on redemption of Stock Appreciation Rights as capital gain as against treated as perquisite under Sec.17(2)(iii) of the I.T. Act and in treating the amount received on exercising the opinion of Employee's Stock Option Plan (EOSP) as long term capital gains instead of treating the same as short term capital gains.

Conclusion:

The word "Perquisite" in common parlance may be defined as any perk or benefit attached to an employee or position besides salary or remuneration. Broadly speaking, these are usually noncash benefits given by an employer to an employee in addition to entitled salary or remuneration. It may be said that these benefits are generally provided by the employers in order to retain the talented employees in the organization. There are various instances of perquisite such as concessional rent accommodation provided by the employer, any sum paid by an employer in respect of an obligation which was actually payable by the employee etc. Section 17(2) of the IT Act was enacted by the legislature to give the broad view of term perquisite.

The applicability of Section 28(iv) is conf ined only to the case where there is any business or professionrelated transactio n involved. Hence, the instant case cann ot be covered under sec 28(iv) of the IT Act for the purpose o f tax liability.

(ACIT vs. Bharat V. Patel)

3. **Bifurcation of lease rentals into interest and loan recovery: An assessee can only be taxed on "real income". The bifurcation of lease rental is not an artificial calculation. Lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. The Guidance Note issued by the ICAI carries great weight. The method of accounting prescribed in such a Guidance Note, in order to compute real income and offering the same for taxation, cannot be disregarded by the AO unless such**

action falls within the scope and ambit of S. 145(3) of the IT Act

The Respondent – M/s Virtual Soft Systems Ltd filed a return of income for A.Y 1999-20 declaring loss of Rs 70,24,178/- while claiming an amount of Rs 1,65,12,077/- as deduction for lease equalization charges. The AO has disallowed the claimed as the lease equalization charges amounting to Rs. 1,65,12,077 and added the same to the income of the Respondent under the Income Tax Act, 1961 (in short 'the IT Act'). The short question that arises for consideration before this Court is whether the deduction on account of lease equalization charges from lease rental income can be allowed under the Income Tax Act, 1961, on the basis of Guidance Note issued by the Institute of Chartered Accountants of India (ICAI)?

The Court has passed the judgement that Guidance Note issued by the ICAI carries great weight and by adopting a method of accounting prescribed in such a Guidance Note, in order to compute real income and offering the same for taxation, cannot be disregarded by the Assessing Officer unless such action falls within the scope and ambit of Section 145(3) of the IT Act. Further, it was submitted that the lease equalization charge was nothing but a method of adjusting the depreciation claimed in the books of accounts to enable the Respondent to represent its real income by adopting an accounting methodology which had surely the seal of approval of a professional body such as the ICAI.

Conclusion:

The method of accounting followed, as derived from the ICAI's Guidance Note, is a valid method of capturing real income based on the substance of finance lease transaction. The rule of substance over form is a fundamental principle of accounting, and is in fact, incorporated in the ICAI's Accounting Standards on Disclosure of Accounting Policies being accounting standards which is a kind of guidelines for accounting periods starting from 01.04.1991. It is a cardinal principle of law that the difference between capital recovery and interest or finance income is essential for accounting for such a transaction with reference to its substance. If the same was not carried out, the Respondent would be assessed for income tax not merely on revenue receipts but also on non-revenue items which is completely contrary to the principles of the IT Act and to its Scheme and spirit.

(CIT vs. Virtual Soft Systems Ltd)

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4. S. 9(1)(i)/ 40(a)(i): Entire law on whether commission paid by an Indian entity to foreign agents can be said to accrue in India and whether the assessee is obliged to deduct TDS thereon u/s 195 explained. All relevant judgments and CBDT Circulars Nos.7 dated 22.10.2009, 23 dated 23 July 1969, 163 dated 29th May 1975 and 786 dated 7th February 2000 considered.

a) That the Ld. CIT(A)-1, Agra has erred in law and on facts in deleting the addition of Rs.36,30,862/- made u/s40(a)(i) on account of non-deduction of tax on payments of commission to

non-resident/foreign commission agents ignoring the facts that commission paid foreign commission agents is deemed to accrue or arise in India, which required deduction of tax as per section 195 of the I.T.Act

b) That the Ld. CIT(A)-1 ,Agra has erred in law and facts in deleting the addition of Rs.36,30,862/- by ignoring the law as laid down as per section 9(1)(i) which clearly comes in the nature of payment by the assessee to nonresidents."

The facts are that the assessee, who is engaged in trading, manufacturing and export of shoes, had filed its return of income for the year under consideration at income of Rs. 1,64,73,630/-. During the assessment proceedings, the AO had made an addition of Rs 70,54,210/- in respect of commission paid by the assessee to foreign agents. While making the said additions, the AO was of the view that the CBDT has issued Circular No.7 dated 22.10.2009, by which, earlier Circulars No.23 dated 23 July 1969, Circular No.163 dated 29th May 1975 and Circular No.786 dated 7th February 2000, which were based on Circular No.23, have been withdrawn. According to the AO Circular No.23 was issued in the context of Section 9 of the Income Tax Act, which deems certain income to accrue or arise in India for non-residents.

The AO held that that the provisions of section 195 are applicable in respect of payments of Commission w.e.f 12.10.2009 to 31.03.2010, on which basis, amount of Rs.70,54,210/- was disallowed u/s 40(a)(i) of the I.T. Act and added to the income of the assessee.

Conclusion:

It is not disputed that that the withdrawal of the circulars No. 23 and 786 has been made on 22.10.2009 vide CBDT Circular No. 7 of 2009 and mere withdrawal of the circular does not negate the principles of income deemed to accrue or arise in India or outside India. The CBDT has not stated that any part of the circulars is contrary to law or that the circulars were wrongly issued or that the law has undergone changes holding their withdrawal. Thus, in respect of cases, which directly follow with the situations covered by the circulars, the liability to tax should continue to be in accordance with section 9 of the Act and its intent. The relevant sections, namely section 5(2) and section 9 of the Income-tax Act, 1961 not having undergone any change in this regard, the clarification in Circular No. 23 still prevails even after the withdrawal. No tax is therefore deductible under section 195 and consequently, the expenditure on export commission payable to a non-resident for services rendered outside India is not liable for withholding tax

(ACIT vs. Manufax (India) S.B.)

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DUE DATES CHART FOR THE MONTH OF MAY 2018 (VARIOUS ACTS):

May 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7 Monthly TDS/TCS payment	8	9	10 GSTR-1 (Mar 2018)	11	12
13	14	15 ESIC payment Provident fund	16	17	18	19
20 GSTR 3B	21	22	23	24	25	26
27	28	29	30	31 GSTR-6 (Jul17-April 18)		

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