




NEWSLETTER

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| | | |
|----------|--|-----------|
| 1 | EXECUTIVE SUMMARY | 1 |
| 2 | ACCOUNTING AND AUDITING | 4 |
| 1. | Expert Advisory Opinion | 4 |
| 2. | Exposure Draft of Guidance Note on Rate Regulated Activities..... | 6 |
| 3. | Guidance Note on Revised Schedule VI | 6 |
| 3 | COMPANY LAW | 7 |
| 1. | Industry specific Cost Audit Order | 7 |
| 4 | FEMA | 8 |
| 1. | Risk Management and Inter-Bank Dealings - Commodity Hedging..... | 8 |
| 2. | External Commercial Borrowings..... | 8 |
| 3. | FDI in Single Brand Retail..... | 9 |
| 4. | Forward Cargo Receipt for negotiation/collection of shipping documents..... | 9 |
| 5. | Opening of Rupee/Foreign Currency Vostro Accounts | 10 |
| 6. | Qualified Financial Institutions (QFIs) | 10 |
| 5 | SEBI | 12 |
| 1. | Trade Controls in normal trading sessions for IPO and other category of scrips:... | 12 |
| 2. | Disclosure of track record of the public issue managed by Merchant bankers | 13 |
| 6 | INCOME TAX | 14 |
| 1. | Case Laws..... | 14 |
| 2. | Notifications and Circulars..... | 21 |
| 7 | OTHERS | 24 |
| 1. | Interest rates on Small Saving Schemes | 24 |
| 2. | Rate of Interest on PPF: | 24 |
| 3. | Clarification – Deregulation of Savings Bank Deposit Interest Rate | 24 |
| 4. | Government Agency Business Arrangement..... | 24 |

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1 Executive Summary

■ Accounting and Auditing

- Expert advisory opinion on accounting of fees paid to financial advisors.
 - § Based on the facts, it is opined that success based fees paid can not be added to cost of investment in accordance with AS 13. Since expense incurred / fees do not meet the definition of asset, the same can not be recognized as a separate asset also.
 - § Therefore, fee paid is correctly recognized as expense in the profit & loss account considering the facts of the case.
- The ICAI has issued 'Exposure Draft of Guidance Note on Rate Regulated Activities' This guidance note deals with effects in terms of recognition, measurement and disclosures in an entity's financial statements of its operating activities that provide goods or services whose prices are subject to cost-of-service regulation.
- Final Guidance note issued on Revised Schedule VI to The Companies Act, 1956 issued by ICAI.

■ Company Law

- Industry specific cost audit order issued by Central Government. New order is effective for financial year commencing on or after 1st April 2012.

■ FEMA

- All AD Banks are permitted to grant permission to listed as well as unlisted companies for commodity hedging.
- The ECB limit for eligible borrowers is enhanced from USD 500 million to USD 750 million subject to the provisions of the revised average maturity period.
- AD Banks to certify the leverage ratio of Infrastructure Finance Companies desirous of availing ECBs under the approval route.
- AD Banks have been delegated powers to approve requests of cancellation of Loan Registration Number and change in the permissible end-use under automatic route
- 100% FDI permitted in single brand retail trading under the Government Route subject to the terms and conditions mentioned in Press Note No. 1 of 2012 issued by Department of Industrial Policy & Promotion.
- In export transaction backed by Letter of Credit, the Authorised Dealer is permitted to accept Forward Cargo Receipt instead of bill of lading even if the relative sales contract does not provide such acceptance.

- In export transaction not backed by Letter of Credit, the Authorised Dealer is permitted to accept Forward Cargo Receipt instead of bill of lading only if the relative sales contract provides such acceptance.
 - AD Banks may take approval of the Reserve Bank only for the first time they enter into the Rupee Drawing Arrangement (RDAs) with non-resident Exchange Houses, however, they shall be required to cause a detailed external Audit of their internal system once the total number of RDAs increase to twenty.
 - QFIs are permitted to purchase the equity shares (listed on Recognized Stock Exchange or under IPO) as well as the units of the Domestic Mutual Funds through eligible Depository Participants. The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company.
- **SEBI**
- Trade Controls in normal trading sessions for IPO and other category of scrips subject to the amount of Issue under open offer and eligibility of call auction.
 - Merchant Bankers to disclose the track record of the performance of each public issue managed by them for period of 3 financial years from the date of listing on their website.
- **INCOME TAX**
- Case Laws
 - § The sale and purchase of shares through PMS to be considered as a business activity and the gains arising there-from to be taxed as business income. **[M/s. Radials International vs. ACIT (Delhi ITAT)]**
 - § Lease rent from Technology Park is liable to tax under the head 'Income from business' and interest income earned, not as a result of systematic/organized course of activity, is chargeable to tax under 'Income from other sources'. **[ITO vs. Information Technology Park Ltd.(Bangalore ITAT)]**
 - § While computing book profits to ascertain minimum alternate tax liability, unabsorbed depreciation already adjusted against general reserve is not deductible **[CIT v. Madras Fertilizers Ltd. (Madras High Court)]**
 - § The corporate guarantee provided by the assessee does not fall within the definition of international transaction. The TP legislation does not stipulate any guidelines in respect to guarantee transactions. In the absence of any charging provision, the lower authorities are not correct in bringing aforesaid transaction in the TP study **[M/s Four Soft ltd vs. DCIT (Hyderabad ITAT)]**

- § Interest on borrowings utilized for acquiring shares in a foreign company is allowable u/s 57(iii) of the Act in spite of no dividend income being earned on the said overseas investments **[Ultramarine & Pigments Ltd. vs. ACIT (Mumbai ITAT)]**
- § Under the provision of section 11(1)(a) of the Act, expenditure incurred in earlier year by charitable trust can be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year would amount to such income being applied for charitable or religious purpose **[CIT vs. Shri Guirati Samaj (Regd) (Madhya Pradesh High Court)]**
- § Deduction u/s 54 of the Act should be allowed to the assessee even if capital gains has been deposited in capital gains account or purchase of house property is after the due date of filing of return of income under the provision of section 139(1) but before the due date of filling belated return of income u/s 139(4) of the Act **[CIT vs. Jagriti Aggarwal (Punjab & Haryana High Court)]**

- Circulars and notifications

- § Notification of Affordable Housing Project as specified business u/s 35AD of the Act
- § Central Processing of Return Scheme, 2011

- **OTHERS**

- The interest rate on small savings scheme shall be aligned with the G-Sec rates of similar maturity with a spread of 25 basis points (bps) except in case of 10 Year National Savings Certificate and Senior Citizen Savings Scheme, 2004.
- The PPF Account shall bear the interest of 8.6% p.a. from 1st December, 2011
- The deregulation guidelines issued by the RBI would be applicable to only domestic savings bank deposit account held by residents in India.
- All private sector banks will be considered eligible to handle any Central/State Government business at par with public sector banks

2 Accounting and Auditing

1. Expert Advisory Opinion

Accounting treatment of fee paid to financial advisors.

Facts of the case:

- a. A government company (the Company) registered under the Companies Act, 1956, is engaged in activities relating to exploration and production of oil and gas. The Company along with another company 'V' formed a joint venture 'Company A' which in turn acquired shares in company B. Company B holds the Participating Interest (PI) in oil and gas blocks in Brazil.
- b. Prior to acquisition of shares in Company B through company A, amongst the other process, it was agreed between the Company and company V to jointly appoint consultants/financial advisors, cost of which shall be shared equally. Subsequently, financial advisors were appointed by the Company for carrying out detailed financial due diligence, develop detailed financial model, determine transaction value, analysis of associated risk with project, preparing the bidding strategy to acquire proposed equity interest or PI. For this advisors were to be paid drop dead fee and success fee.
- c. Based on the report submitted by the financial advisors, decision to acquire company B was taken and it was decided to bid for 3 basins out of 4 held by company B. The Querist has pointed out that bidding could have been possible even without relying on financial advisory's report. Post acquisition of company B, success fees was paid to the financial advisors against their services.
- d. Success fees paid has been treated as revenue expenditure in the books of the Company on account of following reasons:
 - i. In the books of Company, investment in shares of company A (JV) is reflected. Since underlying assets (PI) are in the books of company B (subsidiary of company A (JV)), fees related to PI cannot be capitalised in the books of Company.
 - ii. Expense was incurred at the bidding stage before formation of Company A (JV). Fees paid have no connection with acquisition of shares of company A.
 - iii. As mentioned in para c above, bidding could have been possible without services of financial advisors also.
 - iv. Accounting treatment is also in line with one of the earlier expert advisory opinion (EAO) by ICAI.

Query

- a. Whether the accounting treatment followed by the company is correct?
- b. If no, then what is the correct accounting treatment?

Points considered by the Committee

- a. Committee noted that expense was incurred to avail commercial advantage through its JV in whose books investment in company B would appear. Committee examined that whether expenditure incurred on fees can be added to cost of investment in JV. Committee considered para 28, 29 and 32 of Accounting Standard 13 (AS 13) - Accounting for Investments.
- b. Considering the para of AS 13 as mentioned above, committee was of the view that amount paid to advisors cannot be included in the cost of investment at the time of initial recognition. This amount also does not form part of carrying amount of investment as it is to be carried at cost with diminution which is other than temporary.
- c. Committee also considered that since expense incurred on drop dead fee and success fee does not result into a resource controlled by the Company it cannot be capitalised as a separate asset.
- d. Further committee has also considered para 96 of framework for the Preparation and Presentation of Financial Statements issued by ICAI which provides that expense is recognised in profit & loss account when it does not produce any future economic benefits. Expense is also recognised to the extent that future economic benefits from expenditure do not qualify or cease to qualify for its recognition in the balance sheet as an asset. In view of the above, expenditure on fixed drop dead fee and success fee incurred which does not meet the definition of asset should be expensed out.

Opinion

- a. The accounting treatment followed by the company to treat the expenditure incurred on success fees paid as revenue expenditure is correct.
- b. Since the answer to (a) above is in the positive, this issue does not arise.

2. Exposure Draft of Guidance Note on Rate Regulated Activities

The ICAI has issued 'Exposure Draft of Guidance Note on Rate Regulated Activities'. It includes framework, methods and process of Rate Regulation for goods and services. This guidance note deals with effects in terms of recognition, measurement and disclosures in an entity's financial statements of its operating activities that provide goods or services whose prices are subject to cost-of-service regulation. The guidance note defines terms like Regulator, Cost of Service, Regulatory Asset and Liability.

3. Guidance Note on Revised Schedule VI

Final Guidance Note issued on The Revised Schedule VI to The Companies Act, 1956 issued by ICAI.

3 Company Law

1. Industry specific Cost Audit Order

Central Government has issued directives to get the cost records audited by cost auditor for the financial year commencing from 1st April 2012. The order is applicable to all companies to which Companies (Cost Accounting Records) Rules 2011 apply and which are engaged in production, processing, manufacturing or mining of the products/activities as mentioned in table given below and fulfilling the following criteria:

- a. Turnover from sale/supply of all products/activities during immediately preceding Financial Year exceeds INR 100 crore or
- b. Company's equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India.

| Sr. No. | Industry |
|---------|--|
| 1 | Jute, cotton, silk, woolen or blended fibres/textiles |
| 2 | Edible oil seeds and Oils (incl vanaspati) |
| 3 | Packaged food products |
| 4 | Organic & Inorganic Chemicals |
| 5 | Coal & Lignite |
| 6 | Mining & Metallurgy of ferrous & non-ferrous metals |
| 7 | Tractors & other motor vehicles (incl. automotive components) |
| 8 | Plantation Products |
| 9 | Engineering machinery (incl. electrical & electronic products) |

Other clarifications:

- a. Company to which this order applies shall follow revised procedure for appointment of cost auditor (Circular No.15/2011 dated 11th April 2011).
- b. Cost auditor to give report in accordance with Companies (Cost Audit Report) Rules, 2011. Report is required to be forwarded to Central Government in the prescribed format and within stipulated time.
- c. In view of industry specific cost audit order now having been issued, Company specific cost audit orders issued prior to 31st March 2011 stands withdrawn w.e.f. financial year commencing on or after 1st April 2012.
- d. All companies to whom industry specific orders are not applicable, but their products/activities were covered under company specific cost audit orders issued prior to 31st March 2011 shall comply with company specific orders upto 31st March 2012.

4 FEMA

1. Risk Management and Inter-Bank Dealings - Commodity Hedging

Erstwhile only specifically authorised AD Category-I banks (AD Banks) could grant permission to companies listed on the stock exchange to hedge the price risk in respect of any commodity (except gold, silver, platinum) in the international commodity exchanges/ markets. RBI has now decided to permit all AD Banks to grant permission to listed as well as unlisted companies for the above mentioned commodity hedging.

2. External Commercial Borrowings

- a. The ECB limit for eligible borrowers under the automatic route was enhanced from USD 500 million to USD 750 million or equivalent per financial year per borrower for permissible end-uses. Accordingly for ECB above USD 20 million and upto USD 750 million the average maturity period shall be 5 years. The above limit is also extended to raising of Foreign Currency Convertible Bonds (FCCBs). Similarly, hotel, hospital and software sector can raise FCCBs up to USD 200 million or equivalent for permissible end-uses.
- b. In case of Infrastructure Finance Companies desirous of availing ECBs under the **approval route**, the AD Banks shall have to certify the **leverage ratio** (i.e. outside liabilities/owned funds) while forwarding proposal to the RBI.
- c. It has been decided to delegate powers to the AD Banks to approve the following requests (erstwhile AD Banks were required to refer these requests to Foreign Exchange Department of RBI) from the ECB borrowers, subject to specified conditions:

- i **Cancellation of Loan Registration Number (LRN)**

AD Banks may directly approach the Department of Statistics and Information Management (DSIM) for cancellation of LRN for ECBs availed, both under the automatic and approval routes, provided ECB is not yet drawn and monthly ECB-2 returns till date have been submitted.

- ii **Change in the end-use of ECB proceeds**

AD Banks may approve requests from ECB borrowers for change in end-use in respect of ECBs availed under the automatic route, provided the proposed end-use is permissible under the automatic route, there is no

change in the other terms/conditions of ECB, ECB is in compliance with the guidelines and monthly ECB-2 returns till date have been submitted.

However, change in the end-use of ECBs availed under the approval route will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India, as hitherto.

3. FDI in Single Brand Retail

100% FDI has now been permitted in Single Brand product trading (covers only products which are branded during manufacturing) under the Government route subject to the following terms and conditions as stipulated in Press Note No. 1 of 2012 issued by Department of Industrial Policy & Promotion.

- a. Products to be sold should be of a 'Single Brand' only and sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
- b. The foreign investor should be the owner of the brand.
- c. In respect of proposals involving FDI beyond 51%, mandatory sourcing of at least 30% of the value of products sold would have to be done from Indian 'small industries / village and cottage industries, artisans and craftsmen'. 'Small industries' would be defined as industries which have a total investment in plant & machinery not exceeding USD 1 million. This valuation refers to the value at the time of installation, without providing for depreciation.

4. Forward Cargo Receipt for negotiation/collection of shipping documents

In respect of export transactions backed by Letters of Credit (LC), the Authorized Dealers may accept Forwarder's Cargo Receipts (FCR) issued by IATA approved agents, instead of bill of lading, for negotiation/collection of shipping documents, even if the relative sale contract with the overseas buyer does not provide for acceptance of FCR as a shipping document, in lieu of bill of lading.

In respect of export transactions not backed by LC, the Authorized Dealers may, at their discretion, accept FCR issued by Shipping companies of repute/IATA approved agents (instead of bill of lading), for purchase/discount/collection of shipping documents, provided their 'relative sale contract' with overseas buyer provides for acceptance of FCR as a shipping document instead of bill of lading. However, the acceptance of such FCR for purchase/discount would purely be the credit decision of the bank concerned. The exporters are advised to ensure due diligence on the overseas buyer, in such cases.

5. Opening of Rupee/Foreign Currency Vostro Accounts

It has been decided that AD Banks may take approval of the RBI only for the first time they enter into the Rupee Drawing Arrangement (RDAs) with non-resident Exchange Houses from Gulf countries, Hong Kong, Singapore and Malaysia. Subsequently, they may enter into RDAs, subject to the prescribed guidelines and inform the Reserve Bank immediately.

However, on the total number of RDAs reaching twenty, the AD Banks may cause a detailed external Audit of their internal system. Based on satisfactory report, the Board of AD Banks may authorise more such arrangements.

6. Qualified Financial Institutions (QFIs)

- a. It has been decided to allow QFIs to purchase on repatriation basis equity shares of listed Indian companies on recognized stock exchanges as well as in equity shares of Indian companies under IPO. They are also permitted to acquire equity shares by way of rights shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the investment limits. QFIs shall be allowed to sell the equity shares so acquired by way of sale on recognized stock exchanges or through open offer and buyback regulations as mentioned under SEBI.
- b. In order to invest under this scheme, DP shall have to maintain a separate single rupee pool bank account with AD Bank for QFI investments. The DP shall purchase and sell the equity shares/units of Domestic Mutual Funds as per the instructions given by the QFIs within 5 working days including the day on which the funds are credited to the single rupee pool account failing which the funds shall be repatriated to the designated overseas bank account of the QFIs. Further, the dividend and sale proceeds of the equity shares/units shall also be received in this single pool account and the same shall be repatriated to the designated overseas bank account within 5 working days. The sale proceeds of shares/units and the dividend credited in the account can be utilized for acquisition of the equity shares as instructed by the QFIs during the period of 5 working days.
- c. QFIs shall not be permitted to open any bank account in India, however, QFIs would be allowed to open a dedicated demat account with a DP in India for investment in equity shares under the scheme.

- d. The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings under the Portfolio Investment Scheme for foreign investment in India.

In addition to the above the QFI shall have comply with the guidelines pertaining to the Eligibility, KYC, Pricing, reporting etc.

5 SEBI

1. Trade Controls in normal trading sessions for IPO and other category of scrips:

The normal trading session for IPO and Re-listed scrip on their first day of trading shall commence only subsequent to conclusion of the Call Auction session for such scrip on BSE and NSE. The Price Bands for the first day shall be determined as under:

| Sr. No | Particulars | IPO | | Re-listed |
|--------|--|--|--|--|
| | | Upto Rs.250 Crs | Above Rs.250 Crs | |
| (I) | On Stock Exchanges eligible for Call Auction | | | |
| | <ul style="list-style-type: none"> i. Equilibrium price is discovered in the Call Auction ii. Equilibrium price is not discovered in the Call Auction | <ul style="list-style-type: none"> 5% of the equilibrium price 5% of the issue price | <ul style="list-style-type: none"> 20% of the equilibrium price 20% of the issue price | <ul style="list-style-type: none"> 5% of the equilibrium price Scrip shall continue to trade in call auction sessions until the price is determined. |
| (II) | On Stock Exchanges not eligible for Call Auction | | | |
| | <ul style="list-style-type: none"> i. Equilibrium price is discovered in the Call Auction at BSE/NSE ii. Multiple Equilibrium prices are discovered in the Call Auction at BSE/NSE | <ul style="list-style-type: none"> 5% of the equilibrium price 5% of the equilibrium price closer to the issue price | <ul style="list-style-type: none"> 20% of the equilibrium price 20% of the equilibrium price closer to the issue price | |
| | Equilibrium Price is not discovered in the Call Auction at BSE/NSE | 5% of the issue price | 20% of the issue price | |

2. Disclosure of track record of the public issue managed by Merchant bankers

- a. Merchant bankers to disclose the track record of the performance of the public issues managed by them.
- b. The track record shall be disclosed for a period of 3 financial years from the date of listing for each public issue managed by the merchant banker.
- c. The disclosure shall be on the website of the merchant banker and a reference to this effect shall be made in the offer documents of the public issues managed in the future.
- d. In case more than one merchant banker is associated with a public issue, all merchant bankers who have signed the due diligence certificate, as disclosed in the offer document, shall disclose the track record.
- e. In case of past public issues managed during the last three years, the track record shall be disclosed latest by March 31, 2012.

6 Income Tax

1. Case Laws

a. Gains arising from PMS transactions will get taxed under Income from Business

M/s. Radials International vs. ACIT (Delhi ITAT)

Facts:

- i. The company had offered Short Term and Long Term Capital Gains, arising on sale of shares traded through Portfolio Management Schemes (PMS), under the head Capital Gains.
- ii. Accounting in the books of the company: While depositing the amount in the scheme, company made entry as investment in PMS. Since the company was not aware of the transactions being entered into by the portfolio manager on its behalf till the expiry of quarter, accounting treatment in respect of shares purchased/sold could not be given in the books.
- iii. Role of PMS Manager: A PMS Manager proceeds systematically to manage, on an ongoing basis, the collection of securities in his custody in tune with market variations to optimize the returns. He chooses to buy securities when the market is bearish and sells those securities when the market is bullish. Only he can deal with the Demat account of the company and the company has no say in the application of fund in the stock exchange.

Issue:

The AO & CIT (A) held that as the transactions entered by the PMS Manager were frequent and the holding period was short, shares were purchased with the sole intention of sale and not to hold them as investments. Hence, the resulted gains were assessable as business profits and ought to be included in the business income of the company.

Held:

- i. The company had made the investment under PMS out of the surplus funds available with it. The profit has not arisen directly from the deposits, but from the securities purchased from such deposits. Further, the quantity of shares traded is quite huge and the holding period is small. Hence it is evident that the company had invested such surplus funds in order to earn profits and not dividends.

- ii. Merely because purchase and sale of shares had occurred through Demat account on delivery basis, nature of the transaction would not change. What is important is the intention at the time of purchase, frequency of transactions and volume of the transactions.
- iii. Hence the sale and purchase of shares through PMS was considered as a business activity and the gains arising there-from were added to the business income of the company.

b. Lease rent from Technology Park taxable under 'Income from business' and interest income not resulting from systematic /organized course of activity taxable under 'Income from Other Sources'

ITO vs. Information Technology Park Ltd.(Bangalore ITAT)

Facts:

- i. Information Technology Park Ltd. ("company") is engaged in the development, operating and maintenance of a technology park. The company had purchased land from Karnataka Industrial Areas Development Board (KIADB) for set up of a technology park. The indenture of sale deed between KIADB and the company for transfer of land provided that the land will be transferred to the company for the purpose of establishing a Technology Park which includes provision of building space alongwith other infrastructure facilities.
- ii. Such space was leased out to tenants on rental basis alongwith a separate services agreement for provision of services including certain infrastructural services.
- iii. Other than the above income, company also earned interest by investing surplus funds not immediately required for business.
- iv. Company considered both these incomes incidental to its business and offered them under "Income from Business".

Issue:

The Assessing Officer (A.O.) held that the lease rental income should be taxed under "Income from house property" and the interest income under "Income from other sources".

Held:

The Honorable Bangalore Bench of Income Tax Appellate Tribunal held as follows:-

- i. The rental income received by the company is not only for leasing out the property but also for provision of services/facilities which are inseparable from the rental activity carried on by the company. The main objects of the company in the MOA indicate that the company was formed with the sole intention of commercially exploiting the property by developing and maintaining a Technology Park. Section 80-IA of the Act and the Industrial Park Scheme recognize and lays emphasis on the fact that income from developing, developing and operating, or maintaining or operating an Industrial Park constitutes a business activity. The indenture of sale deed between KIADB and the company clearly establishes that the entire purpose of the project is a commercial activity, much larger in scope than mere investment in property. Accordingly, rental income arising from such complex commercial activity will be classified as 'Income from Business'.
 - ii. The interest income earned by the company is not a result of systematic or organized course of activity or a conduct with a set of purpose; hence it is chargeable to tax under the head 'Income from other sources'.
- c. While computing book profit to ascertain minimum alternate tax liability, unabsorbed depreciation already adjusted against general reserve is not deductible**

CIT v. Madras Fertilizers Ltd. (Madras High Court)

Facts:

- i. The assessee filed return of income declaring NIL income and profit u/s 115J to the tune of Rs.2,79,38,140/-. AO completed the assessment accepting a claim of Rs.2,01,38,614/- towards unabsorbed depreciation of the year 1987-1988 as deduction while computing book profits.
- ii. CIT initiated revisional proceedings pointing out that the balance sheet of the company as on 31.03.1988 was not reflecting any unabsorbed loss/depreciation. The same was already adjusted towards the general reserve and there was no loss to be carried forward. Consequently, the deduction was erroneous according to the provisions of Section 115J (1A)(iv).
- iii. Tribunal agreed with the assessee and held that since the amount of depreciation of Rs.2,01,39,000/- was below the total loss of Rs.26,05,25,000/-, AO has rightly granted the deduction and the view of

the CIT that loss or depreciation referred to in clause (iv) of 115J means only unabsorbed loss or unabsorbed depreciation was not correct. Aggrieved by the same, the revenue went into appeal before the High Court.

Issue:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that the depreciation of the previous years should be deducted for arriving at the book profits u/s 115J, even though such depreciation was not carried forward?

Held:

The Honorable Madras High Court held that the Profit and Loss Account for the year 1988-1989 shows that after adjusting the unabsorbed depreciation against general reserve, assessee had a profit for declaring the dividend and there remained nothing unabsorbed for the assessee to carry forward to next year. Thus, as the assessee had no unabsorbed loss or unabsorbed depreciation to be carried forward; the CIT has rightly given the direction to include the claim allowed earlier in the book profits.

d. Corporate guarantee not an international transaction for Transfer Pricing

M/s Four Soft Ltd vs. DCIT (ITAT Hyderabad)

Facts:

- i. The assessee company engaged in business of software development and IT enabled Services provided corporate guarantee on behalf of its subsidiaries to ICICI Bank UK and DCS group. The assessee was of the view that the said transaction is not an international transaction and hence transfer pricing provisions do not apply
- ii. The Transfer Pricing Officer (TPO) held that guarantee is an obligation and if the principal debtor fails to honour the obligation, the guarantor is liable for the same and hence TPO determined a commission @ 3.75% as the ALP under CUP Method on the basis of commission charged by the ICICI Bank as bench mark.
- iii. The DRP confirmed the action of TPO. The assessee preferred an appeal against the order of DRP

Issue:

Can transactions of giving corporate guarantee on behalf of foreign subsidiary get covered by the definition of international transaction?

Held:

The Hon'ble ITAT held that corporate guarantee provided by the assessee does not fall within the definition of international transaction. The TP legislation does not stipulate any guidelines in respect to guarantee transactions. In the absence of any charging provision, the lower authorities are not correct in bringing aforesaid transaction in the TP study. The corporate guarantee is very much incidental to the business of the assessee and hence cannot be compared to a bank guarantee transaction of the Bank or financial institution. The subsidiaries of the assessee do not receive any advantage from the lower interest rate by the virtue of the corporate guarantee provided by the assessee.

e. Interest on borrowings utilised for acquiring shares in a foreign company is allowable u/s 57(iii) of the Act.

Ultramarine & Pigments Ltd. vs. ACIT (ITAT Mumbai)

Facts:

- i. The assessee company belongs to Thirumali group. Another company of the same group i. e Thirumalai Chemicals Ltd. (TCL) formed a joint venture with an Australian company, named as Thirumalai Chemical Industries Ltd. (Malaysia) (TCLIM).
- ii. The assessee, during the year under consideration availed a short term loan of Rs.9 crores from EXIM bank incurring interest of Rs.78.72 lacs. The AO noted that whole loan amount was utilized for purpose of acquiring shares in TCLIM. He also noted that shareholding of Thirumalai group had gone up from 49.71% to 59.61% after acquisition of shares by assessee, which consisted of 39.93% by TCL and 19.68% by the assessee. Further the AO pointed out that TCLIM is a loss making and there is no scope of earning any dividend income.
- iii. AO referred to the judgment of Bombay High Court in case of Amritaben R. Shah (238 ITR 777) wherein it was held that when the main motive of investment was for acquiring controlling stake, interest on borrowings could not be allowed under section 57 (iii) as the borrowings could not be said to be for the purpose of earning dividend. The AO accordingly disallowed the

entire claim of interest against this, assessee contended that it would receive dividend as and when the company made profit in future.

Issue:

Whether interest on borrowings made for acquiring shares in foreign company is allowable u/s 57(iii) of the Act?

Held:

- i. The learned AR on behalf of the assessee relied on Bombay High Court decision in the case of CIT v. Modi Pvt Ltd wherein it was held that interest paid on borrowings for purchase of shares of a company is allowable u/s 57(iii) of the Act. Further reliance was placed on CIT v. Rajendra Prasad Moodi (Supreme Court), CIT v. Phil Corporation Ltd (Bombay High Court), Ormedas (India) Pvt Ltd v. CIT (Bombay High Court), wherein consistently it was held that when money is borrowed for purchase of shares and no dividend income is earned, interest on borrowed funds would be allowed to tax payer. The H'ble ITAT referring to the case laws relied on by the assessee held that the department could not bring any contrary decisions and that the arguments of the department were devoid of merit in view of the proposition of the case laws quoted by the assessee.
 - ii. Further H'ble Tribunal also answered to the question raised by the tax department that whether DTAA between India and Malaysia would disentitle the deduction since as per Article 11 of DTAA, dividend would be chargeable to tax only in Malaysia and thus there would be no question of allowance of any interest since under the treaty the said dividend will never become taxable in India. To this, H'ble Tribunal agreeing to assessee's contention held that section 90(2) of the Act makes it compulsory for the AO to apply the provisions of the Act or the provisions of treaty whichever are more beneficial. When so applied in this case, income tax provisions are more beneficial to assessee as dividend from foreign company is taxable in India and after allowing deduction of interest expenses, the net income would be a negative figure.
- f. Deduction under Section 54 can be claimed even if the taxpayer furnishes a belated tax return**

CIT vs. Jagriti Aggarwal (Punjab & Haryana High Court)

Facts:

- i. The assessee sold her house property in F.Y. 2005-06 and claimed deduction u/s 54 by making investment in new house property in Jan 2007 i.e. before the due date of filing belated return of income u/s 139(4) of the Act.
- ii. AO denied the deduction claimed by the assessee on the ground that assessee failed to deposit the amounts in capital gains account scheme or purchased the property before the due date of filing of original return of income under the provision of section 139(1) of the Act.
- iii. On appeal by assessee, CIT(A) & ITAT allowed the deduction u/s 54 of the act on the ground that section 139(1) includes sub-section (4) as well,.
- iv. The department filed an appeal before High Court.

Issue:

Whether deduction u/s 54 should be allowed to the assessee if capital gains has been deposited in capital gains account or purchased the property after the due date of filing of return of income under the provision of section 139(1) but before the due date of filling belated return of income u/s 139(4) of the Act?

Held:

The High Court while dismissing the appeal and relying on the decision of Division bench of Karnataka and Gauhati High Courts in Fatima Bai v. ITO 32 DTR 243 and CIT v. Rajesh Kumar Jalan 286 ITR 274 held that sub-section (4) of section 139 is in fact, a proviso to sub-section (1), which provides for extension of period of due date for filing the return in certain circumstances and therefore exemption u/s 54 was allowable where the assessee had purchased new property before the extended due date of filing of return as per section 139(4) and filed the return within such extended time.

- g. Charitable Trust: Excessive expenditure incurred in earlier year can be c/f to set off against subsequent year's income**

CIT vs. Shri Gujrati Samaj (Regd) (Madhya Pradesh High Court)

Facts:

- i. The assessee is a charitable trust formed with the main object to run educational institute for the benefit of public.

- ii. The assessee during the relevant year had incurred excessive expenditure towards charitable purposes over income and the same was carried forward to be adjusted against subsequent year's income. The AO denied the claim of the assessee to carry forward deficit in the application of the funds.
- iii. On appeal, CIT (A) held in favour of revenue. On further appeal, ITAT reversed the decision of CIT (A). On appeal by revenue before High Court, Revenue's appeal was dismissed.

Issue:

Whether the assessee can carry forward deficit in the application of the funds to be adjusted against subsequent year's income?

Held:

The High Court held that under the provision of section 11(1)(a) expenditure incurred in earlier year can be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year would amount to such income being applied for charitable or religious purpose.

2. Notifications and Circulars

a. Notification of Affordable Housing Project as specified business u/s 35AD of the Act

Notification no.1/2012[F.NO.142/24/2011-SO(TPL)]/S.O. 5(E), dated 02.01.2012

CBDT has inserted new income tax rule 11-OA prescribing guidelines and the form and manner in which the applicant shall apply for notification of affordable housing project as specified business u/s 35AD of the Act.

- i. According to the said rule, the applicants need to apply for notification of project in Form no.3CN to Members (IT), CBDT. On application, the Board shall accept or reject the application, as the case may be, by publishing the notification in the official gazette. The notification also discuss various other arrays such as error in form, rectification in application, cancellation or withdrawal of approval etc
- ii. The notification also specifies conditions to be fulfilled for a project to get notification. The brief summary of such conditions are as under:-

§ the project shall have prior sanction of the competent authority

- § The project should commence on or after the 1st day of April, 2011
 - § The project shall be on a plot of land with minimum area of one acre
 - § At least 30% of the total allocable rentable area of the project shall comprise of affordable housing units of EWS category, same way, at least 60% comprising of EWS & LIG category, at least 90% comprising of EWS, LIG & MIG category and remaining 10% may comprise of residential or commerce units.
 - § The plan needs to be approved by the State or Union Territory Government or its designated implementing agency
 - § The project shall be completed with 5 years from the end of the financial year in which the project is sanctioned.
- iii. The assessee shall maintain separate books of accounts for the project with complete details of all capital expenditure incurred on which it intends to claim deduction u/s. 35AD and shall file the return in the due date to the Income Tax Department to avail the tax benefit under section 35AD.
- iv. Affordable housing unit* shall be of following rentable areas* in square meters :

| Particulars | Specified cities* | Other cities |
|-----------------------------|-------------------|--------------|
| Economically weaker section | Up to 25 | Up to 30 |
| Lower Income Group | <25 and >50 | <30 and >60 |
| Middle Income Group | <50 and >70 | <60 and >85 |

Note*: housing unit, rentable areas and specified cities has been defined in the notification

b. Central Processing of Return Scheme, 2011

Notification no. 2 dated 04.01.2012

In exercise of the powers conferred by sub-section (1A) of section 143 of the Income Tax Act, 1961, the Central Board of Direct Taxes hereby specifies the scheme (to be called as Central Processing of Return Scheme, 2011) for processing of return of income:-

- i. **Scope of the scheme:** This scheme shall be applicable in cases where the return of income has been furnished in the following manner:-
- § electronic form, or
 - § paper form, in case of class or classes of persons as notified by the Board in this behalf
- ii. **Revised return of income:** If the original return of income is filed electronically, the revised return shall also be filed through electronic mode.

Further the centre will process only the revised return and no further action will be taken on the original return if it has not already been processed.

- iii. **Invalid or defective return:** The Commissioner may declare a return invalid for non-compliance of procedure or on account of incomplete or inconsistent information in the return or in the schedules or for any other reason. In such case the centre shall intimate the person to upload a rectified return within a specified period. In case of default to comply with such notice, the Commissioner may declare the defective return as not having been uploaded at all or process the return on the basis of information available.
- iv. **Rectification of Mistake:** An application for rectification filed electronically, to the Centre in the format prescribed, will be processed in the same manner as a return of income-tax. Where the rectification results in a demand of tax, the order under section 154 of the Act passed by the Centre shall be deemed to be a notice of demand under section 156 of the Act. Where a rectification has the effect of enhancing an assessment or reducing the refund or otherwise increasing the liability of the person, intimation to this effect shall be sent to the person electronically by the Centre and the reply of the person has to be furnished through electronic mode only.
- v. **Adjustment against outstanding demand:** The set -off of refund, if any, arising from the processing of a return, against tax remaining payable will be done by using the details of outstanding tax demand lying against the person as uploaded onto the system of the Centre by the Assessing Officer.
- vi. **No personal appearance in the Centre:** A person shall not be required to appear either personally or through authorized representative before the authorities at the Centre in connection with any proceedings.

7 Others

1. Interest rates on Small Saving Schemes

The interest rate on small savings scheme shall be aligned with the G-Sec rates of similar maturity with a spread of 25 basis points (bps) with the following exceptions.

| Sr.No. | Name of the Scheme | Spread |
|--------|--|------------------|
| 1. | 10 Year National Savings Certificate (NSC) | 50 basis points |
| 2. | Senior Citizen Savings Scheme, 2004 | 100 basis points |

The interest rates on the Small Savings Scheme for every financial year shall be notified before April 01st of that year. Further it is clarified that the interest rates are not floating in nature and shall remain unchanged for the entire duration of investment till maturity irrespective of subsequent revisions.

2. Rate of Interest on PPF:

It has been notified by the Central Government that the subscriptions made to the fund on or after the 1st day of December, 2011 and balances at the credit of the subscriber shall bear interest at the rate of 8.6 per cent per annum.

3. Clarification – Deregulation of Savings Bank Deposit Interest Rate

RBI has clarified that the deregulation guidelines issued earlier would be applicable to only domestic savings bank deposit held by residents in India. Also, the interest rates shall be determined on the basis of end-of-day balance in the account.

4. Government Agency Business Arrangement

It has been decided that all private sector banks will be considered eligible to handle any Central/State Government business (where RBI pays agency commission) at par with public sector banks.

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