



NEWSLETTER

JUNE
2011



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Chartered Accountants

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1 Accounting and Auditing

1. Expert Advisory Opinion

Treatment of loss arising on sale of underperforming assets net of liabilities to a group company of the supplier of the assets

A. FACTS OF THE CASE

1. A listed Company had given a Letter of Intent (LOI) for 20 Windmills on turnkey basis to a Company dealing in Windmills (hereinafter referred to as the 'Supplier'). The machines installed were under operations and maintenance for two years free of charge. The supplier had also executed a bond of performance guarantee of power generation of 5 lakh units per machine annually.
2. Company faced several problems in the power generation, land title, encroachment thereof and services. The Company intimated the supplier regarding poor revenue generation and performance of Windmills. The supplier admitted about the low performance of the machines and settlement thereof, but the settlement amount was not acceptable to the Company.
3. Company served a legal notice against the supplier and proceedings were initiated under Arbitration and Conciliation Act. Subsequently, Memorandum of Understanding (MOU) was entered into for out-of-court settlement. As agreed in MOU, certain entries were passed in the books of the Company for accounting wind mill generation, interest, amount receivable and payable etc.
4. One of the group company of the supplier agreed to take over the assets and liabilities of the Company related to wind mill. This resulted into net loss of Rs.444 lakh to the Company.

B. QUERY

1. Whether the loss of Rs.444 lakh arising out of the windmill transaction can be amortized over a period of time or whether the loss should be fully charged off in the year in which the wind mills are sold by the Company.

C. POINTS CONSIDERED BY THE COMMITTEE

1. The Committee notes that the issue raised in the query relates to the manner of recognition of loss arising out of the wind mill transaction.
2. The Committee observed that in absence of specific query regarding the timing when the loss on the transaction should have been accounted, it refrained from answering the query as to whether the loss could be said to have incurred before entering of the MOU or after entering into MOU or at the time of transfer of assets and related liabilities.
3. The Committee notes that the Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India, provides that;
 - a. "Losses represent decreases in economic benefits and as such they are no different in nature from other expenses" (Para 78).
 - b. "An expense is recognized immediately in the statement of profit and loss when expenditure produces no future economic benefits" (Para 96).

Considering the definition given above and facts of the case, loss incurred does not produce any future economic benefit to the Company and should be fully charged off to the profit and loss account when incurred.

4. Further, amortisation over a period of time is possible only when the item is recognised as an asset. The term asset has been defined in the framework as follows: "An *asset* is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise" (Para 49(a)). Since neither of the conditions is met in the case of the loss under consideration, it cannot be recognised as an asset and, therefore, there can not be any amortisation.

D. OPINION

On the basis of the above, the committee is of the opinion that the loss arising out of the windmill transaction in the instant case should be fully charged off to the profit and loss account of the year in which such loss is incurred. Such loss cannot be amortised over a period of time.

2 Company Law

1. Differences between IFRSs and Ind AS

Institute of Chartered Accountants of India (ICAI) has issued a note to bring out the differences between IFRSs and Ind AS (Converged Indian accounting standards) notified by ministry of corporate affairs (MCA). This note is divided into 4 sections as given below. The note also gives the reasons for actions/carve outs.

Part I: IFRSs deferred by MCA

Part II: Carve outs from IFRSs in the relevant Ind AS

Part III: Other major changes in Ind AS vis a vis IFRSs not resulting into carve outs

Part IV: Comparative chart of IFRSs and corresponding IND ASs indicating inter alia IFRSs in respect of which no corresponding Ind AS has been formulated and reasons therefore.

2. Issue of certificates by digital signatures by ROC

In order to cut timelines and another step towards “Green Initiative”, all certificates and standard letters issued by the Registrar of Companies will now be issued electronically under the Digital Signature of the Registrar of Companies. This will be done in the phased manner so as to issue all certificates with digital signature after 3rd July 2011.

3. Amendments to Designated Partner Identification Number (DPIN)

Following amendments have been made Limited Liability Rules, 2009 in respect of DPIN:

- a. Definition of DPIN now includes in Directors Identification Number (DIN) issued under Companies Act, 1956 and rules made there under.
- b. Individual can make application in Form DIN-1 under Companies (Directors Identification Number) Rules, 2006 for obtaining DPIN under LLP Act, 2008 and such DIN shall be sufficient for being appointed as designated partner under LLP Act.
- c. If a person holds both DIN and DPIN, his DPIN shall stand cancelled and DIN will be sufficient.

- d. Every designated partner shall intimate his consent to become partner and DPIN to LLP in form 9 and LLP shall intimate such DPIN to Registrar. Designated partner should intimate changes in any particulars within 30 days.

4. Name availability guidelines

In supercession of all previous circulars and instructions, the Guidelines are now given for name availability which are likely to be effective from 24th July 2011.

The application will have to be accompanied by a declaration that search has been carried out on MCA portal that the proposed name does not resemble with the companies/ LLP already registered or where name is already approved, that the name does not infringe IPR, it is not offensive to public or does not violate provisions of Emblem & Names Act etc.

Further in order to fast track the approval of name, an option has been granted while submitting the form to submit certificate from practicing Chartered Accountants, Company Secretaries and Cost Accountants that they have used the MCA portal for checking whether there is resemblance of the proposed name(s) with already registered companies and Limited Liability Partnerships (LLPs) respectively or not, the search report will have to be attached with the application. Additionally the professionals will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and that the same is in conformity with Name Availability Guidelines, 2011. On submission of the certificate, application will be processed without backend processing by the ROC. However, this facility is not available for application relating to change of name.

The guidelines further makes the professional liable for penal action in addition to disciplinary action which the respective Institutes takes if subsequently it is determined that the name ought not to have been granted. The earlier option of reserving the name for further period of 30 days has been removed.

Also the name granted will be available for a period of 60 days. If the company is not incorporated within the time frame, the approval will lapse and the name will be made available to others.

These guidelines are applicable for availability of the name of the Company.

5. Certification of financial statements prepared in XBRL mode

The Statutory Auditor also has to certify the financial statements prepared in XBRL mode for filing on MCA-21 portal.

6. Exemption from payment of additional fee

Companies that require filing XBRL financial statements under Phase I are exempted from additional fee due to delay in filing up to 30th September 2011.

7. New Proposed guidelines on which public comments have been invited

The proposed guidelines on the following have been issued for public comments

- a. Guidelines for strike off names under section 560 of the Companies Act, 1956 of companies (non profit companies) which have been granted license under section 25 of the Companies Act, 1956.
- b. Guidelines for conversion of section 25 company (non profit company) to an ordinary company under Companies Act, 1956.

8. Recording event based information in case of defaulting companies

It is clarified that no request, whether oral, in writing or through e-forms, for recording any event based information / changes shall be accepted by the Registrar of Companies from defaulting companies, unless they file their updated Balance Sheet and Profit & Loss Accounts and Annual Return with the Registrar of Companies for the year 2006-07, 2007-08, 2008-09 and 2009-10.

9. Amendment to Schedule XIII

Section 2 (C) of Part II of the Schedule XIII has been amended to the effect that permission of Central Government in case of subsidiary of listed company will not be required provided remuneration committee and BOD of holding company has (a) given its consent and amount of remuneration is deemed as remuneration paid for section 198, (b) the remuneration of the applicant is approved by holding company in general meeting, (c) the remuneration of applicant is deemed to be remuneration paid by the holding company and (d) all the members of the subsidiaries are bodies corporate. Further Central Government approval is not required if the remuneration is approved by BIFR.

10. Others

Official liquidator to quote their individual PAN in Income tax return of the company under liquidation.

3 Service Tax

1. Withdrawal of exemption postponed

The effective date for withdrawal of exemption in relation to transport of goods by rail (through government rail) has been postponed to January 2012 instead of July 2011. Similarly the effective dates for other related notifications have also been changed.

2. Amendment to Rule 7 of 'Point of Taxation Rules, 2011'

The Point of Taxation Rules, 2011 lists out certain categories of services providers who are required to remit taxes on receipt of money. Consequent to amendment, provision of these rules will not be applicable to Consulting Engineering services also w.e.f. 1st July 2011. Other services which were excluded from the applicability of the said rule earlier are Architect Services, Interior Decorator Services, Chartered Accountant Services, Cost Accountant Services, Company Secretary Services, Scientific or Technical Consultancy service, Legal Consultancy Services.

4 FEMA

1. Investments abroad by NBFC

NBFCs will not be permitted to open a branch abroad. Existing NBFCs which have already set up branches abroad can continue to operate subject to complying with the key directions.

NBFCs desirous of making overseas investments by way of subsidiary / joint venture / representative office or undertaking investments abroad are required to obtain No Objection certificate (NOC) from RBI.

Key directions issued by RBI with regard to investments abroad are as under:

- a. In addition to the compliance of ODI regulations, the following key conditions need to be complied:
 - i. NBFCs will be permitted to invest only in financial service sectors where their core activity is regulated by a financial sector regulator in the host jurisdiction
 - ii. Aggregate overseas investment should not exceed 100% of the Net Owned Fund (NOF). The overseas investment in a single entity, including its step down subsidiaries, by way of equity or fund based commitment shall not be more than 15% of the NBFC's owned funds.
 - iii. The level of Net Non-Performing Assets of the NBFC should not be more than 5% of the net advances
 - iv. Overseas investment should not involve multi layered, cross jurisdictional structures and at most only a single intermediate holding entity shall be permitted
 - v. Annual certificate from the statutory auditors shall be submitted by the NBFC certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment
 - vi. A quarterly return is also required to be submitted by the NBFC to the concerned authority
- b. NBFCs can set up representative offices abroad for the purpose of liaison work, undertaking market study and research but not undertaking any activity which involves outlay of funds, provided it is subject to regulation by a regulator in the host country.

- c. Specific Conditions for Subsidiaries and Joint ventures
 - i. Liability of the parent entity in the proposed overseas entity shall be limited to its either equity or fund based commitment
 - Disclosure to the effect of the above should be made in the balance sheet of the overseas entity
 - The parent NBFC shall not be permitted to extend implicit or explicit guarantee to or on behalf of such entity
 - No request for letter of comfort in favour of the subsidiary abroad from any institution in India shall be permitted
 - ii. The entity being established abroad should not be a shell company i.e. "a company that is incorporated, but has no significant assets or operations."
 - iii. The entity being established abroad by the NBFC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations
 - iv. The parent NBFC shall obtain periodical reports/audit reports about the business undertaken by the subsidiary abroad and shall make them available to Reserve Bank and inspecting officials of the Bank

2. Regularization of LO/BO

Under the FEMA provisions request of foreign NGOs/NPOs/Government bodies etc. (foreign entities) to open Liaison Office/Branch Office (LO/BO) in India is considered by RBI in consultation with the Government of India.

Accordingly, the foreign entities who have established LO/BO in India and continuing to function without obtaining permission from RBI need to approach the RBI within a period of 90 days from the date of issue of the circular (July 15th 2011) for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

Further, the foreign entities who may have established LO/BO with the permission from the Government of India may also approach the RBI along with a copy of the said approval for allotment of a Unique Identification Number (UIN).

3. Foreign Currency Convertible Bonds (FCCBs)

- a. Buyback / prepayment of FCCB

- i. The time limit for completion of premature buyback of FCCB has been extended from 30th June 2011 to 31st March 2012.
- ii. RBI has permitted Indian companies to prematurely buyback FCCBs subject to the condition that the buyback value of the FCCB shall be at the minimum discount as per table below:

Particulars	Minimum Discount to Face value	
	Erstwhile	Current
Automatic Route (where repayment is through foreign currency funds/ECB)	15%	8%
Approval Route (where repayment is made through internal accruals)		
<ul style="list-style-type: none"> ▪ up to US \$ 50 million 	25%	10%
<ul style="list-style-type: none"> ▪ more than US \$ 50 million and up to 75 million 	35%	15%
<ul style="list-style-type: none"> ▪ more than US \$ 75 million and up to US \$ 100 million 	50%	20%

b. Redemption of FCCB

RBI has directed AD Banks to allow refinancing of outstanding FCCBs by Indian companies under the automatic route subject to the following conditions:

- i. Fresh ECBs/ FCCBs shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;
- ii. The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs;
- iii. The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs ;

ECB/FCCB beyond \$500 million for the purpose of redemption of the existing FCCB will be considered under the approval route

Any restructuring involving change in the existing conversion price of the FCCBs will not be permitted. However, proposals for restructuring not involving change in conversion price will be considered under the approval route.

4. Notification by RBI

RBI has notified in accordance with the FDI circular issued by DIPP¹ in April 2011, the issue of equity/ preference shares against (i) Import of capital goods/ machineries / equipments (including second-hand machineries) (ii) Pre-operative/pre-incorporation expenses - under approval route

5. Master Circulars issued in July 2011

RBI has issued Master Circulars on various regulations in relation to the Foreign Exchange Management Act. These Master Circulars are a compilation of the regulatory framework and instructions issued by the RBI. However, on review of the various notifications issued by RBI and the Master Circular, the following changes/inclusions have been observed.

No.	Master Circular	July 2011 Master Circular	Previous Circulars
1.	Foreign Direct Investment		
1.a	Investment by Overseas Corporate Bodies (OCBs)	Before making any fresh FDI under the FDI scheme an erstwhile OCB should through their AD bank take a one time certification from RBI that it is not in the adverse list being maintained with the RBI.	No such condition
1.b	Transfer from Non Resident to Non Resident Indian (NRI)	The circular has contradicting statements in this regard. Under 8.B. I (a), it mentions that NR (other than NRI/OCB) can transfer by way of sale or gift shares or convertible debentures to another NR (including NRI) whereas under para 8.B.II (iv), it mentions that transfer of shares from NR to NRI will require	Transfer from NR to NRI is under automatic route
1.c	Foreign Venture Capital Investor (FVCI)	FVCI can only acquire securities by way of public offer or private placement and not by way of private arrangement with third party.	No such condition

¹ Department of Industrial Policy and Promotion

1.d	Wholesale trading of items sourced from Micro, Small and Medium Enterprises (MSE)	100% FDI is permitted in trading of items sourced from small scale sector subject to approval from FIPB.	The FDI circular issued by DIPP in April 2011 mentions the same under automatic route.
2.	External Commercial Borrowings (ECB)		
2.a	Eligible borrowers	Under the Approval route, on lending by EXIM bank for specific purposes shall be considered on a case to case basis	Not included as eligible borrower
3.	Direct Investment by Residents in JV / WOS		
3.a	Transfer involving write off of investment	Eligible Corporates were permitted to write off their overseas investments without prior RBI approval. However, these corporates would also need to satisfy the requisite disinvestment conditions applicable to other disinvestments under automatic route	No mention of such condition

5 SEBI

1. Change in status or constitution of members and sub-brokers

Requirement for taking prior approval by market participants from SEBI in case of change in status or constitution had been dispensed with; however they are required to take prior approval from SEBI in case of change in control. In this regard, SEBI has notified that all market participants, namely Registrars to issue and Share Transfer Agents, Merchant Bankers, Bankers to issue, Credit Rating agencies, Debenture Trustees, and Underwriters, shall report to SEBI on half-yearly basis the following, within 15 days of expiry of the half-year, commencing from the half-year ended September 30, 2011.

- a. Amalgamation, demerger, consolidation or any other kind of corporate restructuring
- b. Change in Director, including managing director/ whole-time director
- c. In case of a partnership firm any change in partners not amounting to dissolution of the firm
- d. Change in shareholding not resulting in change in control

If there is no change during the relevant quarter, it shall be indicated in the report.

2. Change of name by Listed Companies

Erstwhile, all listed companies seeking change of name required that at least 50% of its total revenue in the preceding 1 year period should be accounted for by the new activity suggested by the new name. SEBI has now relaxed this provision by allowing listed companies to undertake change of name if the amount invested in the new activity/project (Fixed Assets + Advances + Works In Progress) is at least 50% of the assets of the company. The company would need to submit the auditor's certificate to the exchange to confirm the compliance.

3. SEBI Trading Rules

Securities of Listed companies shall continue trading in the normal segment on stock exchanges only if 100 % (erstwhile 50%) of their non-promoter holding is in dematerialized form by September 2011. Trading of securities in companies, which do not meet the new criteria by the deadline, would happen in the trade for trade (TFT) segment only.

4. Admission of LLPs as member of Stock Exchanges

SEBI has clarified that as a Limited Liability Partnership (LLP) is a body corporate, Stock Exchanges may consider granting membership to LLPs subject to LLP complying with the requisite conditions.

6 Others

1. Public Provident Fund Scheme, 1968

The Government in December 2010 had notified that all accounts opened on behalf of a HUF prior to 13th May 2005 shall be closed after the expiry of 15 years. In this regard the Government has decided that interest at PPF rates would be paid on those PPF (HUF) accounts, which had attained the maturity after May 13, 2005 but closed by the subscribers before December 07, 2010, subject to the conditions that the accounts had not been extended thereafter and the deposits were retained in such accounts without further subscriptions.

7 Income Tax

1. Case Laws

a. HUF is a “relative” for gifts exemption u/s 56(2)(v), (vi) & (vii)

Vineetkumar Raghavjibhai Bhalodia vs. ITO (ITAT Rajkot)

Facts:

The assessee, a member of HUF, received gift of Rs. 60 lakhs from an HUF. The Assessing Officer (AO) treated the same as taxable income u/s 56(2)(v) as HUF was not covered in the definition of the “relative”. On appeal, CIT(A) confirmed the addition on the ground that the term “relative” as defined in Section 56 of the Act does not include HUF. He also held that the same cannot be considered as exempt u/s 10 (2) read with the provisions of section 64(2) of the Act since the assessee failed to prove that the sum is received by any coparcener of HUF on partial or total partition of HUF. Aggrieved by the CIT(A)’s order, assessee filed an appeal before ITAT.

Issue:

- i. Whether gift received from HUF by a member of HUF falls under the definition of “relative” as provided in the Explanation to clause (vi) of sub section (2) of section 56 of the Act?
- ii. Whether the amount received by the assessee from his HUF is covered by Section 10(2) of the Act.

Held:

The H’ble ITAT held that gift received by the assessee from the HUF is exempt u/s 56(2)(v),(vi),(vii) on the ground that though the definition of the term “relative” does not specifically include HUF, a ‘HUF’ constitutes all persons lineally descended from a common ancestor and includes their mothers, wives or widows and unmarried daughters. As all these persons fall in the definition of “relative”, an HUF is ‘a group of relatives’. As a gift from a “relative” is exempt, a gift from a ‘group of relatives’ is also exempt.

As regards exemption u/s 10(2), H’ble ITAT held that the property or the income of HUF belongs to the members thereof who are either entitled to share in the property on partition or have a right to be maintained. There is no material on record to hold that the gift amount was part of any assets of HUF and it was out of income of family to a member of HUF. The assessee has received gift from HUF and

has satisfied both the conditions u/s 10(2) i.e he is a member of HUF and secondly he received the sum out of the income of such HUF, may be of earlier year, therefore, the same is exempt u/s 10(2) of the Act.

b. For “Equipment Royalty” u/s 9(1)(vi), control of equipment by payer is essential

Yahoo India Pvt Ltd vs. DCIT (ITAT Mumbai)

Facts:

The assessee, an Indian company, remitted Rs. 34 lakhs to Yahoo Holdings Hong Kong Ltd. (Yahoo Hong Kong), for placing banner advertisements on the web portal of the Yahoo Hong Kong without deducting tax at source. AO held that since the income attributable to the services claimed to be rendered outside India had accrued in India as per provisions of section 9 and the same being taxable in India, the assessee was required to deduct tax at source. The AO disallowed the amount u/s 40(a).

On appeal, CIT (A) held that that the payment was “for the use or right to use any industrial, commercial or scientific equipment” (i.e. the server) outside India and had the character of “royalty” under clause (iva) of Expl 2 to s. 9(1)(vi) and accordingly confirmed the addition. Aggrieved by the order of CIT(A), assessee filed an appeal before the Tribunal.

Issue:

Whether the payment made by assessee for placing banner advertisement on the web portal of Yahoo Hong Kong is in the nature of royalty u/s 9(1)(vi)?

Held:

The Hon’ble Tribunal held that the words “use” and “right to use” followed by the word “equipment” indicate that there must be some positive act of utilization, application or employment of equipment for the desired purpose. If an advantage was taken from sophisticated equipment installed and provided by another, it could not be said that the recipient/customer “used” the equipment as such.

The assessee only made use of the facility created by the service provider who was the owner of the entire network and related equipment. The banner advertisement hosting services did not involve use or right to use by the assessee any industrial, commercial or scientific equipment and no such use was actually granted by Yahoo Hong Kong. Uploading and display of banner advertisement on its portal was entirely the responsibility of Yahoo Hong Kong and the assessee was only required to

provide the banner Ad to Yahoo Hong Kong for uploading the same on its portal. The assessee had no right to access the portal of Yahoo Hong Kong and there was nothing to show any positive act of utilization or employment of the portal of Yahoo Hong Kong by the assessee. Thus, the assessee is not required to deduct TDS while remitting amount for placing banner advertisements on the web portal.

c. Property rent assessable as “business profit” if commercial activities are carried out.

ITO vs. Shanaya Enterprises (ITAT Mumbai)

Facts:

The assessee company is in the business of letting out of studio to production houses for shooting TV serials etc. Along with letting out of the property, the assessee also provided various facilities such as furniture and fixtures as per requirements of the clients, meter for recording consumption of electricity, security arrangements, temporary structures and frameworks, facilities of plumbers, electricians, carpenters and painters etc. Hire charges earned by the assessee from letting out is offered as “business income”.

However the AO held that as the “main intention” of the assessee was letting out of property, the hire charges was assessable as “Income from house property” and not as Business Income. Further TDS on the hire charges was deducted u/s 194-I of the Act. On appeal, the CIT (A) reversed the order of AO on the ground that the assessee had “exploited the property by way of commercial activity” and the receipts constituted “business income”.

Issue:

Whether property rental should be assessed to business profit if commercial activities are carried?

Held:

The Hon’ble Tribunal held that merely because the income is attached to immovable property, income cannot be assessed under the head “income from house property”. The Tribunal observed that what has to be seen is the primary object of the assessee while exploiting the property. If the main intention is to let out the property, the income is assessable as “income from house property”. While if the main intention is to exploit the immovable property by way of complex commercial activities, then the income is assessable as business income.

In the present case, the assessee had exploited the property by way of “complex commercial activities”. There was significant value addition to the premises by providing all incidental and support services to facilitate cine shooting and related activities. Further, the assessee also carried out commercial activity involving marketing and promotions for earning the income. Accordingly, the hire charges were assessable as “business profits” and not as “income from house property”.

d. Payment of commission instead of dividend can be disallowed under the provisions of section 36(1)(ii)

M/s. Dalal Broacha Stock Broking Pvt. Ltd Vs. ACIT (ITAT Mumbai-Special Bench).

Facts:

During the year the assessee company had paid commission of Rs. 40 lacs each to its three employee directors who also held the entire share capital. The assessee submitted that the payment of commission was not in lieu of profit or dividend as payment had been made to the directors for the hard work they had put in improving the profits of the company. The AO observed that the company did not declare any dividend and no reasons were given for not declaring the dividend. The AO disallowed payment of commission u/s 36(1)(ii) on the ground that the directors had distributed dividend in the form of commission. In appeal, the CIT(A) confirmed the addition made by the AO and also rejected an additional claim made by the assessee regarding allowability of commission under the provisions of section 37(1).

Issue:

Whether on the facts and circumstances of the case, the payment of commission is disallowable under the provisions of section 36(1)(ii)?

Held:

The H’ble ITAT held that the provisions of section 36(1)(ii) applies to all employees including shareholder employees though the disallowability is restricted to partners and shareholders because it is only in those cases that payment can be said to be in lieu of profit or dividend.

In this case, there is no evidence to show that the directors had rendered any extra services for payment of huge commission in addition to services rendered as an employee for which salary was paid. The turnover and profit was exceptionally high as compared to the earlier years because of the stock market boom. The assessee being a share broker gets commission on sale/purchase of shares by

investors/traders and its income is assured irrespective of whether the investor/trader loses or gains in the transaction. The steady rise in performance was due to improved market conditions and not because of any extra service rendered by the directors.

The provisions of section 36(1)(ii) are intended to prevent an escape from taxation by describing the payment as commission when in fact ordinarily the payment should have been in the form of dividend. The word “payable” under section 36(1)(ii) does not mean that dividend should be statutorily or legally payable. Since payment of dividend is discretionary and not compulsory, any such construction will lead to absurd results. The word “payable” means that dividend would have been declared by any reasonable management on the facts and circumstances of the case considering the profitability and other relevant factors.

The device adopted by the assessee was with the intention to avoid payment of full taxes. Thus, reasonable conclusion can be drawn that the dividend ought to have been paid and thus payment of commission was rightly disallowed under section 36(1)(ii).

- e. Expenditure incurred before availing the benefits of the expenses are revenue expenditure if no enduring benefit is accrued to the assessee.**

CIT vs Tata SSL Ltd. (Mumbai High Court)

Facts:

- i. The assessee company paid Rs. 45,21,000/- to Mahanagar Gas Ltd. towards the CNG Gas connection and claimed it as revenue expenditure.
- ii. The AO disallowed the claim on the ground that the payment was made as capital contribution towards the cost of acquiring service meter, twin steam regulator, meter regulating station and cost of pipelines up to meter regulating station and that the payment was made before the commencement of gas supply. CIT(A) allowed assessee’s appeal on the ground that the expenditure was incurred as an integral part of the profit earning process and not for acquisition of an asset of a permanent character. The order of the CIT(A) was confirmed by the H’ble tribunal.

Issue:

Whether expenditure incurred for acquiring services which would facilitate manufacturing operations of the assessee are capital expenditure?

Held:

The Hon'ble Bombay High Court upheld the decision of the Tribunal that various payments were made by the assessee for obtaining connection of CNG which would facilitate manufacturing operations of the assessee company. It would not give the assessee any right or control over gas facility. It was an integral part of the profit earning process and facilitated in carrying on the assessee's business more efficiently without giving any enduring benefit to the assessee. Also the ultimate ownership of the assets remained with Mahanagar Gas Ltd. As a result the payments made could not be considered as capital expenditure.

2. Notifications

a. Filing of Income Tax Return electronically under Digital Signature by firms, individuals and HUFs for AY 2011-12 and onwards

Central Board of Direct Taxes vide Notification No. 37/2011 [F. NO. 149/68/2011-SO (TPL)], dated 1-7-2011, has amended Rule 12 of Income Tax Rules, 1962 relating to Return of Income.

As per the notification, firms, individuals and Hindu Undivided Families liable to Tax Audit are required to file Return of Income electronically under Digital Signature. The notification is effective from 1st July, 2011. Accordingly, the amendment is effective for the return of income to be filed for Assessment Year 2011-12 and onwards.

b. Cost Inflation Index for Financial Year 2011-12

Central Board of Direct Taxes vide Notification No. 35/2011 [F. NO. 142/5/2011-(TPL)], dated 23-6-2011 has notified Cost Inflation Index for Financial Year 2011-12 as **785** for the purpose of computation of long term capital gain.

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