R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

October 2022

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-Tushar Zore

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DIRECT TAX

1) **Circular no 20/2022:**

Additional seven days' time to in filing of Income Tax Returns for certain Assessee

The CBDT has notified that the due date for filing Income Tax Return (ITR) u/s 139(1) for Assessment Year (AY) 2022-23 has been extended from 31/10/2022 to **07/11/2022** for corporate assessee or where tax audit is applicable. Companies or Non-Corporate Business Enterprises required to have their account books audited under the Companies Act 2013 (Statutory Audit) or Income Tax Act, 1961 (Tax Audit) have been granted 7 additional days to file their Income Tax Return.

Eligible Assessee	Original Due Date	Extended Due Date
Corporate Assessee	31/10/2022	07/11/2022
Assessee to whom Tax Audit is applicable	31/10/2022	07/11/2022

2) Circular no 21/2022:

Extension in filing of TDS return for form 26Q pertaining to period 1st July 2022 to 30th September 2022

Considering the difficulties in filing of TDS statement in the revised and updated Form 26Q, the Central Board of Direct Taxes (CBDT) has extended the due date of filing of Form 26Q for the second quarter of Financial Year 2022-23 from 31st October, 2022 to **30th November, 2022.**

Particulars	Original Due Date	Revised Due Date
Form 26Q – 2nd Quarter Non Salary TDS Return	31st October 2022	30th November 2022

~ Compiled by Kiran Sable

Income Tax

Case Laws:

1) **Case law on Equalisation Levy**

❖ **Issue Involved:**

NO EQUALIZATION LEVY IS DEDUCTIBLE WHERE PERSON RUNNING THE AD, THE TARGET AUDIENCE & PERSON DISPLAYING THE AD ARE ALL LOCATED OUTSIDE INDIA.

- **In the ITAT Jaipur bench 'A', IT Appeal No. 305 (JPR.) Of 2022, [Assessment Year 2018-19], October 7,2022 in case of Deputy Commissioner of Income Tax V/S Prakash Chandra Mishra.**

GIST OF THE CASE:

RATE OF EQUILISATION LEVY	SERVICE PROVIDER	SERVICE RECIPIENT
6%	RESIDENT INDIAN WHO CARRIES ON BUSINESS OR PROFESSION IN INDIA OR NON-RESIDENT HAVING PERMANENT ESTABLISHMENT IN INDIA.	SPECIFIED SERVICES RECEIVED OR RECEIVABLE BY A NON-RESIDENT IN INDIA.

Meaning: The equalization levy would be 6% of the amount of consideration for specified services received or receivable by a non-resident not having the permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having the permanent establishment in India.

In the selected case, the role of the assessee is that of an agent of Google Singapore whereby the assesse merely granted access for advertisement to the people approaching him for said service. The service includes granting access to the clients & generating credentials for them. However, the place, geographical location, targeted audience, duration, etc. of the advertisement were all has to be decided by the client & not by the assessee. Thus, in substance the assessee is acting only as a conduit for channelizing the funds from the person wanting to advertise on Google.

Held:

1. The AR (Appellate Respondent) of the assessee has shown on the issue that targeted audience, the person who runs advertisement and party who assist on displaying [Google

Singapore] all are outside India. The DR (Defendant Respondent) could not controvert that the person running the advertisement, person displaying the advertisement and the person using that advertisement are all outside India.

2. The AR (Appellate Respondent) of the assessee further submitted that on this issue he has not only persuaded these facts to the CIT(A) but also to the Assessing Officer & there are no contrary findings placed on record by the Revenue and the ld. DR in this proceeding. Thus EL is not attracted in the set of present facts & circumstances and no disallowance under section 40(a)(ib) is attracted.

2) Order passed by ITAT cannot be completely recalled under section 254(2), it can only be rectified, corrected for any mistake apparent on record.

❖ **Issue Involved:**

SUPREME COURT RULES THAT ITAT HAS NO POWER TO RECALL ITS ORDER EVEN IF SUBMISSIONS WERE FLED ON MERITS.

- **In the ITAT of Mumbai, in the case of Commissioner of Income-Tax (IT-4), Mumbai v/s Reliance Telecom Ltd.**

Gist of the Case:

The Tribunal had passed a detailed order originally during appellate proceedings holding that payment made by assessee company (i.e. Reliance Telecom Ltd.) for purchase of software was in nature of royalty and TDS was to be deducted at rate of 10 per cent on such payment. Said order could not be completely recalled by Tribunal in exercise of powers under section 254(2) as powers under section 254(2) were only to rectify/correct any mistake apparent from record.

The Order was passed on the given case:
The Assessee-company entered into a supply contract with a non-resident company. It filed an application under section 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of software without deducting tax at source. The assesse contended that said non-resident company had no Permanent Establishment (PE) in India and in terms of the DTAA between India and Sweden & USA, no tax was to be deducted in India on same. The Assessing Officer rejected the Assessee's application on grounds that consideration for software licensing constituted royalty under section 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 10 per cent on said royalty payment.

The Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of software were in nature of royalty and tax at source was to be deducted on such payment. The assessee filed a miscellaneous application for rectification under section

254(2) before the Tribunal. The assessee had also filed an appeal before the High Court. The Tribunal recalled its original order and passed an order in favor of the Assessee. Thereafter, the writ petition filed by the assesse was also withdrawn. The revenue filed a writ petition against order of the Tribunal on miscellaneous application. The High Court dismissed said writ petition.

Held:

On the revenue's appeal before the Supreme Court: -

1. The court has considered the order passed by the Tribunal allowing the miscellaneous application in exercise of powers under section 254(2) & recalling its earlier order as well as the original order passed by the Tribunal. Having gone through both the orders passed by the Tribunal, the court is of the opinion that the order passed by the Tribunal recalling its earlier order is beyond the scope and ambit of the powers under section 254(2). While allowing the application under section 254(2) and recalling its earlier order, it appears that the Tribunal has re-heard the entire appeal on merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). In exercise of powers under section 254(2), the tribunal may amend any order passed by it under sub-section (1) of section 254 with a view to rectifying any mistake apparent from the record only. Therefore, the powers under section 254(2) are akin to order XLVII rule 1 CPC. While considering the application under section 254(2), the Tribunal is not required to re-visit its earlier order and to go into detail on merits. The powers under section 254(2) are only to rectify/correct any mistake apparent from the record.

2. In the instant case, a detailed order was passed by the Tribunal when it originally passed an order, by which the Tribunal held in favor of the revenue. Therefore, the said order could not have been recalled by the Tribunal in exercise of powers under section 254(2). If the Assessee was of the opinion that the order passed by the Tribunal was erroneous, either on facts or in law, in that case, the only remedy available to the Assessee was to prefer the appeal before the High Court, which as such was already filed by the assesse before the High Court, which the assessee withdrew after the order passed by the Tribunal recalling its earlier order.
   Therefore, as such, the order passed by the Tribunal recalling its earlier order which has been passed in exercise of powers under section 254(2) is beyond the scope and ambit of the powers of the Tribunal conferred under section 254(2).
   Therefore, the order passed by the Tribunal recalling its earlier order is unsustainable, which ought to have been set aside by the High Court.

~ Compiled by Salman Khan

RBI

1) **RBI/2022-23/125**
   DOR.STR.REC.71/21.06.201/2022-23

Review of Prudential Norms – Risk Weights for Exposures to Corporates and NBFCs

- Banks cannot reckon the bank loan rating given by External Credit Assessment Institutions (ECAIs) to corporates and NBFCs if the rating disclosure is devoid of the lenders' details.
- In such cases, Banks will be required to apply risk weights of 100 per cent or 150 per cent as applicable in terms of extant instructions, RBI said.
- RBI noted that disclosures relating to lenders' details are not available in a large number of Press Releases (PRs) issued by ECAIs owing to the absence of requisite consent by the borrowers to the ECAIs.
- RBI noted that absence of such information may result in banks applying the derived risk weights for unrated exposures, without satisfying themselves regarding adherence to prescribed conditions. This may, consequentially, lead to potentially lower provision of capital as well as underpricing of risks, it added.
- The above instructions shall be effective from March 31, 2023.

2) **RBI/2022-23/129**
   DOR.CRE.REC.No.78/03.10.001/2022-23

Multiple NBFCs in a Group: Classification in Middle Layer

- Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016, applicable NBFCs that are part of a common Group or are floated by a common set of promoters shall not be viewed on a standalone basis.
- In line with the existing policy on consolidation of assets of the NBFCs in a Group, the total assets of all the NBFCs in a Group shall be consolidated to determine the threshold for their classification in the Middle Layer.
- If the consolidated asset size of the Group with a common set of promoters is INR 1000 crore and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the Group shall be classified as an NBFC in the Middle Layer.
- Also, Statutory Auditors are required to certify the asset size as on March 31 of all the NBFCs in the Group which shall be furnished to the Department of Supervision of RBI.
- These guidelines shall be effective from October 01, 2022.

3) RBI/2022-23/127
DOR.FIN.REC.No.73/03.10.117/2022-23

Diversification of activities by SPDs – Review of permissible non-core activities – Prudential regulations and other instructions

- Earlier, the RBI allowed Standalone Primary Dealers (SPDs) to undertake foreign exchange activities as part of their non-core activities.
- Now, the RBI has prescribed that the SPDs shall adhere to the prudential regulations and other instructions.
- SPDs shall maintain a market risk capital charge of 15% for net open positions (limits or actual, whichever is higher) arising out of forex business with a risk weight of 100%. The net open position for foreign exchange exposures shall be calculated as prescribed.
- In addition to the foreign exchange exposure limits, the capital charge for market risk for all the permissible non-core activities, including foreign exchange activities, shall not be more than 20% of the Net Owned Fund of the SPD as per the last audited balance sheet.

4) RBI/2022-23/126
DOR.FIN.REC.No.72/03.10.117/2022-23

Diversification of activities by SPDs – Review of permissible non-core activities

- Reserve Bank of India, made a reference to circular DNBR (PD) CC.No.094/03.10.001/2018-19 dated July 27, 2018 in terms of which SPDs, as part of their non-core activities, are permitted to offer foreign exchange products, as allowed from time to time, to their Foreign Portfolio Investor (FPI) clients.
- As proclaimed in the Statement on Developmental and Regulatory Policies Para 3 dated 5th August, 2022, it has been decided to allow (Standalone Primary Dealers) SPDs to offer all foreign exchange market-making facilities to users, as currently permitted to Category-I Authorized Dealers, subject to adherence to the prudential regulations and other guidelines to be issued separately in this regard.
- Further, all financial transactions involving the Rupee undertaken globally by related entities of the SPD shall be reported to CCIL's Trade Repository before 12:00 noon of the business day following the date of transaction will be applicable with effect from 1st January, 2023.

-Compiled by Ananya Poojari

~Pooja Thopate

Allow us to tell you more!

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