VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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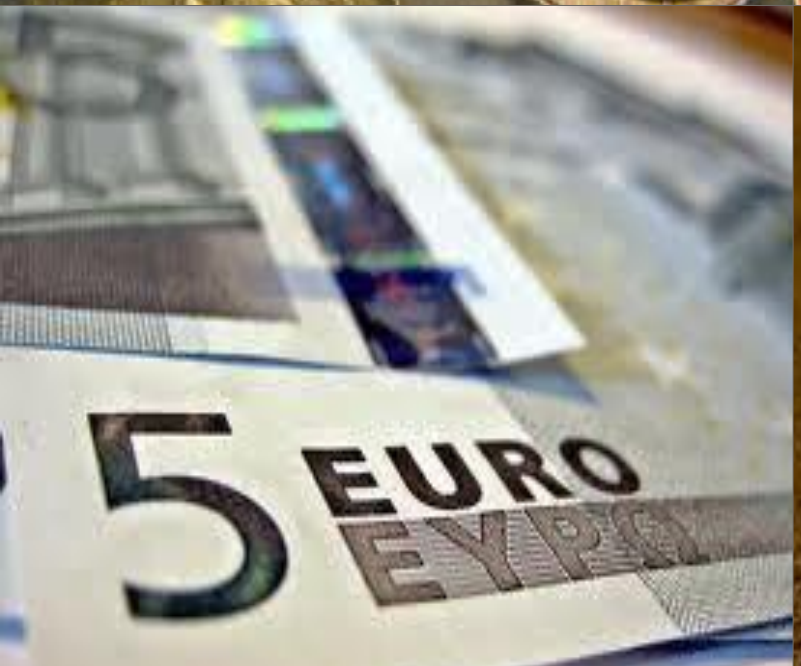
DIRECT TAX REVIEW
FEBRUARY 2016



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CBDT's directive regarding redressal of taxpayer grievances raised due to TDS mismatches

The CBDT has issued a letter dated 15.02.2015 in which it has pointed out that taxpayers are facing problems due to mismatch of TDS/other taxes. These problems may be due to the non-reporting of TDS and uploading the TDS details improperly by their deductor. As a result, demand notices are being sent to the taxpayers due to non-availability of the tax credits for claim. The CBDT has drawn attention to Circular No. 8/2015 in which AOs were directed to give credit for taxes paid on the basis of evidence furnished by the taxpayer. The CBDT has directed that the SOP as per the said Circular should be strictly followed and immediate steps should be taken to reduce the grievances of the taxpayers.

Source: CBDT letter dated 15.02.2015

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CBDT's circular of clarification regarding nature of share buy-back transactions under Income-tax Act, 1961

The CBDT has issued Circular No 03/2016 dated 26.02.2016 to clarify the law relating to the taxability of share Buy-back transactions under income-tax Act, 1961. The CBDT has made it clear that the consideration received on buyback of shares between the period 01.04.2000 till 31.05.2013 would be taxed as capital gains in the hands of the recipient in accordance with section 46A of the Act and no such amount shall be treated as dividend in view of provisions of section 2(22) (iv).

Source: CBDT Circular No. 03/2006 dated 26.02.2016

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AO can't dispute character of income on sale of listed shares held for more than 12 months: CBDT

CBDT has issued circular no. 6/2016 dated 29-02-2016, wherein it was held that Sub-section (14) of section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The

Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—

(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid circulars issued by the CBDT.

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

Source: CBDT circular no 6/2016 [F.NO.225/12/2016-ITA-II], DATED 29-2-2016

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Supreme Court: Non disposal of an application for registration before the expiry of six months as provided u/s 12AA (2) results in deemed grant of registration

Facts of the case

In Society for the Promotion of Education, Adventure Sport & Conservation of Environment vs. Commissioner of Income Tax (2008) 216 CTR (All) 167, the Allahabad High Court held that non-disposal of an application for registration before the expiry of six months as provided u/s 12AA (2) would result in deemed grant of registration. However, this was reversed by the Full Bench of the Allahabad High Court in CIT vs. Muzafar Nagar Development Authority (2015) 372 ITR 209. The appeal filed by the department in the case of Society for the Promotion of Education came up before the Supreme Court.

Ruling of the Supreme Court

The Supreme Court ruled in favour of the assessee by contending that the short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision

Source: CIT Vs Society for the promotion of Education, Adventure Sport and Conservation of Environment

Supreme Court of India dated 16-02-2016

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CBDT clarifies on TDS applicability on payments made by television channels and publishing houses

The issue of applicability of TDS provisions on payments made by broadcasters/telecasters to production houses for production of content or programme for broadcasting/telecasting has been examined by CBDT in view of representations received in this regard. It has been noted that disputes have arisen on the issue as to whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' or a contract for 'professional or technical services' and, therefore, liable for TDS u/s 194C or u/s 194J of the Income-tax Act, 1961 (the Act).

While applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster and (ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, it is hereby clarified that such contract is covered by the definition of the term 'work' in section 194C of the Act and, therefore, subject to TDS under that

section and in the second situation where the telecaster/broadcaster acquires only the telecasting/broadcasting rights of the content already produced by the production house, there is no contract for 'carrying out any work', as required in sub-section (1) of section 194C. Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections under Chapter XVII-C of the Act.

Source: CBDT Circular no. 4/2016 [F.NO.275/07/2016-IT(B)]

Dated 29-02-2016

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CBDT Issues Revised Guidelines for Stay of Demand by AO till CIT(A)'s Order

The CBDT has issued Office memorandum dated 29.02.2016 by which it has revised Instruction No. 1914 dated 21.03.1996 and issued fresh guidelines for stay of demand at the first appeal stage.

In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

(B) In a situation where,

(i) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(ii) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

(C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/CIT

for a review of the decision of the assessing officer.

(D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.

(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-

(i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(ii) reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

Source: CBDT office memorandum [F.No. 404/72/93-ITCC] dated 29.02.2016

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CBDT has developed a system for identification of duplicate PANs

Detailed procedure, screen shots and navigation information is available in ITBA-PAN user manual which is available on ITBA portal page under "Online Training on ITBA" link which may be referred by the RCC.

This new process will help identification and surrender of duplicate PAN allotted to a person so that further use of the same duplicate PAN allotted to a PAN holder could be stopped.

Source: ITBA-PAN INSTRUCTION NO.3 [F.NO.PDGIT(S)/ADG(S)-1/ITBA-PAN INSTRUCTIONS/0001/2016],

CBDT ,dated 24-2-2016

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Now contribution in 'Atal Pension Yojana' would provide Sec. 80CCD deduction

In exercise of the powers conferred by sub-section (1) of section 80CCD of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the 'Atal Pension Yojana (APY)' as published in the Gazette of India, Extraordinary, Part I, section 1, vide number F. No. 16/1/2015-

PR dated the 16th October, 2015 as a pension scheme for the purposes of the said section. This notification shall come into force from the date of its publication in the Official Gazette.

Source: NOTIFICATION NO. SO 529(E) [NO.7/2016 (F.NO.173/394/2015-ITA-I)], Dated 19-02-2016

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Govt. exempts specified income of 'Competition Commission of India' under Sec. 10(46)

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purpose of the said clause, the Competition Commission of India, a Commission established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), in respect of the following specified income arising to the said Commission, namely: —

(a) amount received in the form of Government grants;

(b) fees received under the Competition Act, 2002; and

(c) interest accrued on Government grants and interest accrued on fees received under the Competition Act, 2002.

2. This notification shall be effective subject to the following conditions, namely: —

(i) the Competition Commission of India does not engage in any commercial activity;

(ii) the activities and the nature of the specified income of the Competition Commission of India shall remain unchanged throughout the financial years; and

(iii) the Competition Commission of India shall file return of income in accordance with clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be applicable for the specified income of the Competition Commission of India for the financial years 2016-2017 to 2020-2021.

Source: NOTIFICATION NO. SO 530(E) [NO.8/2016 (F.NO.196/32/2014-ITA-I)], Dated 19-02-2016

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CBDT: Issues clarifications for FATCA/CRS implementation; Revised procedure for registration & report submission soon

CBDT issues clarifications for implementation of FATCA and CRS in furtherance to guidance note updated on December 31, 2015; Clarifies that Local Sub-custodians in India shall be required to carry out due diligence on the accounts held by

Global Custodians' (GCs) end-clients apart from GCs, however, Local Sub-custodians may rely on KYC/FATCA/CRS documentation done by GC for account holders; With respect to due diligence of HUF accounts, states that an HUF account shall be treated as an entity account and its due diligence will be same as prescribed under PMLA/ KYC procedures; With respect to an NBFC, states that an NBFC accepting deposits in the course of banking business will be considered as Depository Institution and will report accordingly, whereas an NBFC working as investment entity will report accordingly; Further, mentions that revised procedure for registration and submission of report under FATCA and CRS will be rolled out shortly (while presently the same is covered under Notification No. 4 dated September 4, 2015.

Source: CBDT Clarification dated 19-02-2016

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CBDT clarifies meaning of term "Initial Assessment Year" in sec. 80-IA (5) of the Income-tax Act

The CBDT has issued Circular No. 1/ 2016 dated 15.02.2016 in which it has clarified the meaning of the term "initial assessment year" in section 80-IA (5) of the Income-tax Act, 1961

In section 80IA of the income tax act, a reference has been made to the term 'initial assessment year'. It has been represented that some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/ manufacturing activity had commenced and are considering such first year of commencement/operation etc. Itself as the first year for granting deduction, ignoring the clear mandate provided under sub-section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The matter has been examined by the Board. It is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s 80IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. it is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 801A for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term 'initial assessment year' would mean the first year opted for by the assessee for claiming deduction u/s 801A. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

Source: CBDT Circular no 1/2016 dated 15-02-2016

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CBDT directs AOs to strictly follow S. 154 rectification time limits

The CBDT has issued Instruction No. 01/2016 dated 15.02.2016 in which it has directed Assessing Officers to strictly follow the time limit of six months

prescribed under section 154(8) of the Income-tax Act, 1961 to pass rectification orders. The CBDT has also directed the supervisory officers to monitor the adherence to the prescribed time limit and initiate suitable administrative action where failure to adhere to the prescribed time limit is noticed

Source: CBDT Instruction no 01/2016 dated 15.02.2016

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CBDT directs AOs to pass section 154 rectifications orders in writing

The CBDT has issued instruction no. 02/2016 dated 15.02.2016 in which it has directed assessing officers to pass rectifications orders in writing and serve a copy on the assessee and not just make an entry on the AST system

Source: CBDT Instruction no 02/2016 dated 15.02.2016

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CBDT directive regarding issue of online TDS certificates under section 195(2) and 195(3)

The CBDT has issued TDS instruction No. 51 dated 04.02.2016 in which important directions have been given with regard to the functionality for issue of online TDS certificates u/s 195(2) and 195(3) for lower/ no-deduction of tax at source.

Source: CBDT TDS Instruction no 51 dated 04.02.2016

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Important CBDT directive on adjustment of refunds against demand under section 245 by CPC

The CBDT has issued an Office Memorandum dated 29.01.2016 to deal with the issue as to whether a refund due to the assessee can be adjusted against a demand due from him u/s 245 of the Act. The CBDT has inter alia stated that in cases where the tax payer has contested the demand, CPC would issue a reminder to the jurisdictional Assessing Officers about the contention of the taxpayer, asking them to either confirm, or make appropriate changes, to the demand, within thirty days. In case no response is received from the jurisdictional Assessing Officer, within the stipulated period of thirty days, CPC would issue the refund without any adjustment. The responsibility of non-adjustment of refund against outstanding arrears, if any, would lie with the Assessing Officer.

Source: CBDT office memorandum dated 29-01-2016

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