TAXATION TIMES

January 2021

Taxation Times is a monthly newsletter published by UJA specifically with an intent and object to simplify and provide clarity on certain provisions of the Income Tax Act, discuss the implications of various amendments and circulars notified time and again, understand the judicial precedents as decided by various courts and interpret these.

The Taxation Times is an initiative to keep you abreast with the latest development in the realm of the Direct Taxes in India.

Contents

- Introduction Pg 3
- Articles Pg 4
- Case Laws Pg 7
- Did You Know? Pg 10
- Tax Calendar Pg 11
- Notifications & Circulars Pg 12

“A lot can happen in one year” and the Year 2020 bears absolute witness to this statement! This year taught us some invaluable life lessons. Better said than done – the year 2020 will go down in the history of mankind! As we bid goodbye to the year gone by & welcome the new year – we hope that the uncertainty and economic downturn caused by the pandemic will subside & the new year will see better opportunities of growth.

The Post - Covid World has immense opportunities for India. As per the news reports India will become the fifth largest economy by 2025 & is touted to become a magnet for Foreign Direct Investment. Prime Minister Modi is taking several initiatives to put India on the forefront & boost it’s economy. How & when will these measures pay off is a matter of time!

Coming back to the current issue of Taxation Times, here’s what we offer to you in the last edition of 2020-

1. India has received twin major blows within a span of three months from the International Court of Arbitration – first in the case of Vodafone and later in the case of Cairn. What India needs to learn from this dual setback? Read on to know more.

2. Some judicial decisions by the Hon’ble Madras High Court

3. A Did You Know series which talks about certain tax happenings.

4. Upcoming compliances for January 2021 & Circulars & notifications for December 2020.

Incase you have any feedback or need to us to include information to make this issue more informative, please feel free to write to us at info@uja.in.

Wishing You a Happy & Prosperous New Year 2021!

Best Regards,
UJA Tax Team

Can TDS Compliance Be Made Easy For Taxpayers?

A recent article published in the Indian Express[1], *stated that – "more than 82% of individual taxpayers faced mismatch during the last three years resulting in disallowance of refund and the creation of avoidable harassment of taxpayers, the latest CAG report on the Department of Revenue has pointed out."*

The 'Transparent Taxation' platform was introduced by Hon'ble Prime Minister Mr. Narendra Modi to honour 'honest taxpayers' of the country & make tax compliance easier as a part of government's initiatives to reform direct taxes in India. The objective behind this initiative was to ease compliance, expediate refunds & benefit honest taxpayers.

Despite these initiatives, taxpayers at large are facing issues to claim credit of tax deducted at source – even though appearing in their 26AS. This results in disallowance of refunds to the taxpayers & creation of infructuous demands. Furthermore, no reasons for denial of such credit are being assigned. In order to claim the credit of the taxes so withheld, the taxpayer has to then file for rectification after which he finally gets the correct credit of the taxes so withheld. This procedure is cumbersome and time consuming.

Incase a taxpayer has refunds for subsequent years, the infructuous demands which are outstanding due to non – availability of TDS credit are adjusted against these refunds. This in turn once again puts the taxpayers into a strenuous position.

India has been making continuous efforts to restructure it's tax structure and also automate it's data collection and data exchange to achieve complete transparency in the tax arena. From introduction of e-payment of taxes and e-filing of income tax returns to making 26AS more detailed and informative so as to increase transparency – the administration has undergone a complete reform. However, despite these reforms, the taxpayers are being harassed due to such lack of synchronization of data and systems of the department. What is even more startling – that there is no quick resolution of these errors on the part of the government.

The government should take necessary steps to ascertain reasons for TDS mismatch. When rectifications are filed by taxpayers, complete information such as – status of resolution and mode of resolution should be made available to taxpayers. Details of transactions are readily available to income tax department through various sources & hence correct and quick information can be available to the taxpayers. It is essential that the systems of the department be made more robust & accurate so that inadequacies of their system do not cause unnecessary hassle to the taxpayers. A grievance redressal system should be in place wherein the taxpayers can expect quick redressal to their grievances.

	TAXPAYER A	TAXPAYER B	TAXPAYER C	VERY SENIOR CITIZEN TAXPAYER
GROSS TOTAL INCOME	₹3 LAKH	₹4 LAKH	₹8 LAKH	₹4.5 LAKH
Exemptions (HRA, conveyance, LTA, etc)	₹20,000	₹1.6 lakh	₹2 lakh	Nil
Deductions (80C, 80D, 80TTA)	₹40,000	₹70,000	₹1.5 lakh	₹1.5 lakh
Net taxable income	₹2.4 lakh	₹1.7 lakh	₹4.5 lakh	₹3 lakh
Tax payable	Nil	Nil	₹15,450	Nil
Tax deducted at source	Nil	Nil	₹15,450	₹25,000
WHETHER INDIVIDUAL HAS TO FILE RETURNS?	YES Even though tax is nil, the gross income before deductions is above basic limit.	NO After exemptions, the gross income is below the basic limit.	YES Even though all taxes are paid, gross income is above the basic limit.	YES Return has to be filed to claim refund of TDS on bank deposits.

[1] https://www.newindianexpress.com/thesundaystandard/2020/sep/27/82-per-centtaxpayers-harassed-for-tds-mismatch-cag-2202325.html

It's time the government actually make compliances easier for taxpayers. Procedures which are less tedious & user friendly be implemented so that taxpayers can rely on the tax administration.

A dual setback – what India Inc needs to learn?

Retrospective amendments as the name suggests are made applicable from a previous specified date. Such amendments are made to undo certain decisions taken by judicial authorities to remove the lacuna's & loopholes in law. By retrospectively amending statues, the legislature often repeals an existing law or widens the tax bracket/opens up newer avenues of taxation. Thus, retrospective amendments have always been a matter of controversy.

Every retrospective amendment needs to be understood with the rationale of the legislature behind the introduction of such amendment. The Hon'ble Supreme Court in the case of National Agricultural Co-operative Marketing Federation of India[2] observed that *"the power to amend the law with retrospective effect is subject to several judicial reorganized limitations, one of which is that the retrospectivity just be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional"*.

Also, it is pertinent to note that any amendment in law which deprives the taxpayer of his rightful claim, the same cannot be said to have been made in public interest & is violative of Article 14 and 19(1)(g) of the Constitution of India. An amendment so made should be enunciate principles of 'fairness'.

The Controversy - Vodafone Group Plc and Cairn Plc vis-a-vis retrospective amendments

On account of retrospective amendments in law, India has received a twin setback in a period of three months – first in the case of Vodafone, when the Permanent Court of Arbitration of Hague ruled that the retrospective demand of INR 22,100 crores imposed on Vodafone in 2007 was *'in breach of guarantee of fair & equitable treatment'* and the second very recently in the case of Cairn Plc. where India has been ordered to pay damages on the retrospective capital gains of INR 24,500 crores imposed on the oil major in it's business reorganization in India in 2006 – 2007. The Permanent Court of Hague has once again in this case held that India's demand was *'in breach of fair treatment under the UK – India Bilateral Investment Treaty'*.

Against the decision of the International Arbitration Court, India has now preferred an appeal in Singapore.

Both the aforesaid cases arose due to the retrospective amendment of s. 9 & s. 12 of the Income Tax Act (hereinafter referred to as 'ITA') w.e.f 1961 wherein it was held that indirect transfer of shares shall be taxable in India.

This move by the Government to retrospectively amend the Finance Act 2012 received criticism from investors worldwide who held that such retrospective amendment was 'perverse' in nature. Following this amendment, there were several controversies on the fairness of imposing taxes retrospectively.

When, in 2014, the new Government came into existence it criticized the retrospective amendment to legislation circumventing the decision of the Supreme Court, however, no remedial action was taken to rectify the same. Infact, during the Budget Speech of 2014 it was stated that *"The Government will not ordinarily bring about any change retrospectively which creates a fresh liability….. All fresh cases arising out of retrospective amendments of 2012 in respect of indirect transfers and coming to the notice of the Assessing Officers will be scrutinized by a High Level Committee to be constituted by the CBDT in all such cases."*

The then Finance Minister, late Arun Jaitley had said that the sovereign right of the government to undertake retrospective legislation was unquestionable, but *"this power has to be exercised with extreme caution & judiciousness keeping in mind the impact of each such measure on the economy and the overall investment climate"*.

[2] National Agricultural Co-operative Marketing Federation Of India &Ors V/s Union of India – Supreme Court

Why are retrospective amendments undesirable?

1. A retrospective amendment adversely impacts the environment in which businesses operate & and re not very lucrative for foreign investors looking at investing in India.

2. Retrospective amendments are often made to *'cure a defect'* in legislation. However, when such retrospective amendments are made care should be taken to ensure that such amendments do not impact businesses adversely. Most businesses plan their taxes & their structures in line with the law applicable at that time. However such retrospective amendments create undue harassment & taxpayers are subject to unnecessary and unending legal battles.

3. The amendment in law may simply impose an additional burden in the form of unwarranted tax demands on taxpayers. This creates a hostile environment for doing business in the minds of the taxpayers.

Conclusion

On one hand when India is already reeling under the impact of the unending pandemic and the several consequences of the lockdown, the additional damages & costs which India needs to bear due to the decision of the International Arbitration Court only further creates a dent in the economy.

While, Hon'ble Prime Minister Shri Narendra Modi is bringing in and implementing policies to stop 'tax terrorism' and projecting India as the next manufacturing hub & taking several measures to drive foreign investment into India, the cavity caused by the retrospective amendments in the past is creating a hostile business environment.

It's time that the Government now takes steadfast steps to strategically cure defects in legislation which would be fair to the masses at large and not focus on merely increasing revenues of the Government.

Recent Case Laws

"In a recent decision, the Hon'ble Madras High Court has held that s. 44AD is applicable only to an eligible business. Remuneration & interest received by a taxpayer who is a partner of a firm cannot be construed as business income under s. 28(v) & therefore not eligible to presumptive rate of taxation of 8% under s. 44AD"

Facts:

The taxpayer[3] is an individual – a partner in three partnership firms. For the assessment year (AY) under consideration, the taxpayer filed his return of income applying the presumptive rate of tax at 8% under s. 44AD of the Income Tax Act 1961 (ITA) . The Ld. Assessing Officer ('AO') opined that s. 44AD is available only for an eligible assessee engaged in an eligible business. The taxpayer was a partner in a partnership firm & remuneration and interest received from partnership firm cannot be construed as gross receipts for the purpose of s, 44AD. Accordingly, the AO disallowed the claim of the assessee under s. 44AD. The CIT(A) and the Hon'ble ITAT upheld the order of the AO.

Aggrieved, the taxpayer has preferred an appeal before the Hon'ble High Court.

Issue under Consideration:

Can partners remuneration & interest received by the taxpayer from the partnership firm be construed as 'turnover' or 'gross receipts' for the purpose of s. 44AD?

Arguments before the High Court:

1. Before the High Court, the Ld. Counsel for the taxpayer elaborated the provisions of s. 44AD of the ITA. Further reliance was placed on the decision in case of Ramniklal Kothari[4] and Munjal Sales Corporation[5]. Also, attention was drawn to the Budget Speech of the Hon'ble Finance Minister, CBDT Circular No. 636[6], Guidance Note on Tax Audit under s. 44AB of the ITA & Memorandum explaining provisions to Finance Bill 1992. Based on the aforesaid documentation, the Ls. Counsel submitted that the taxpayer is an eligible assessee for the purpose of s. 44AD(6)(i) and (iii) of the ITA.

2. The Sr. Counsel for the Revenue submitted that the taxpayer is not doing any business but the firm is carrying on business in which the taxpayer is a partner & therefore, the condition of ***eligible business*** is not satisfied. As per the statement issued by the ICAI, 'turnover' for the purpose of s. 44AD is interpreted to mean aggregate amount for which sales are effected or services rendered by an enterprise and the assessee has not performed any sales nor rendered any service but has merely received remuneration & interest from the partnership firm. The remuneration or interest is not excessive & the expenses to earn this income have already been debited to the profit & loss account of the firm.

The Ld. Counsel also observed that the Tribunal held that s. 44AD was to support small businesses to comply with the taxation provisions and the partners remuneration and interest is not eligible business of the taxpayer & hence 44AD will not be applicable.

Decision:

1. The Hon'ble Madras High Court first pointed out that the decision of Ramniklal Kothari (supra) was couched on different facts of & cannot be applied to the case on hand.

2. In order to claim the beneficial provisions of s. 44AD of the ITA, the taxpayer should establish that he is an eligible assessee engaged in an eligible business &

[3] Anandkumar V/s ACIT, Circle 2, Salem [2020] 122 taxmann.com 252 (madras)
[4] CIT V/s Ramniklal Kothari [(1969) 74 ITR 57 (SC)]
[5] Munjal Sales Corporation V/s CIT, Ludhiana [(2008) 168 Taxman 43 (SC)]
[6] CBDT Circular no. 636 dtd. 31st August 1992

such business should have a total turnover or a gross receipt. Admittedly, in the present case, the taxpayer is not carrying on any business & therefore remuneration & interest received by the taxpayer cannot be construed as turnover of the taxpayer neither does it qualify as gross receipts.

3. As per the statement issued by ICAI, 'turnover' for the purpose of this clause may be interpreted to mean aggregate amount of sales effected or services rendered by the enterprise. In the instant case, neither has the taxpayer effected any sales nor has he rendered any services he is merely receiving remuneration & interest from partnership firms which has already been debited to the profit & loss account of the partnership firm.

4. The CIT(A) took a factual position of the nature of the receipts & dismissed appeal of the taxpayer. Similarly, the Tribunal also tested the correctness of the order passed by the AO and the CIT(A). It took note of s. 28(v) which deals with profit & gains from business & profession & noted that clause (v) mentions about s. 40(b) & rightly concluded that only remuneration & salary received from the firm to the extent eligible under s. 40(b) of the ITA would be considered as profits & gains of the business or profession of the recipient partner.

5. The Tribunal observed that partner should not be disentitled for claiming reasonable remuneration from a firm in which he is a partner & should not be denied reasonable interest on capital invested in the firm & if these changes are not made in the accounts of the firm, then the pro rata profits of the firm would be higher resulting in higher tax for the firm. Therefore, payments have to be construed indirectly as a type of distribution of profits of a firm or otherwise the firm would have to be taxed. The Tribunal also noted that position before the amendment to s. 44AD by Finance Act 2009 when the scope was limited only to business of civil construction & labour for civil construction. Subsequently, by virtue of the amendment, the applicability of presumptive rate of tax was expanded to include any business which had turnover or gross receipts of less than INR 1 crore. The Tribunal noted the explanatory provisions to Finance Act 2009 wherein the CBDT explained why the scope of the said provision was enlarged. From perusal of such circular, it is clear that the intent behind the widening of scope of s. 44AD was to make a note of the fact that there has been substantial increase in small businesses who earns substantial income are outside the tax net. Thus, the position becomes clearer that if we take note of s. 44AD which states that any deduction allowable under s. 30 to s. 38 shall be deemed to be have given full consideration.

6. Accordingly, the decision of the Tribunal is upheld and the contention of the taxpayer is rejected.

"In a recent decision, the Hon'ble High Court held that when a Keyman Insurance Policy was taken by the employer company & assigned in favour of it's employee Managing Director on the basis of s. 10D(10D) read with Explanation 1, character of Keyman Insurance Policy would not get converted into ordinary Life Insurance Policy despite of it's assignment & therefore any benefit accruing to the employee on surrender or encashment will be taxable in the hands of the employee as 'perquiste'."

Facts:

The taxpayer[7] is a Managing Director of a Private Limited Company ('the company'). During FY 2004-2005, the company had taken two keyman insurance policies each amounting to INR 100 lakh on the life of the taxpayer. One policy was assigned in favour of the taxpayer on 31.03.2006 & the surrendered value of the policy of INR 58,74,752/- was offered to income under s. 17(3) of Income Tax Act 1961 (hereinafter referred to as 'ITA') in AY 2006-2007 itself. Subsequently, the taxpayer encashed the policy at INR 97,03,083/- on 29.06.2006 & the Ld. Assessing Officer ('AO') added the sum of INR 38,28,331/- to the income of the taxpayer. The CIT(A) and the Hon'ble ITAT upheld the order of the AO.

Aggrieved, the taxpayer has preferred an appeal before the Hon'ble High Court.

7 Allu Arvind Babu V/s ACIT, Non – Corporate Circle – 20(1), Chennai [2020] 122 taxmann.com 66 (Madras)

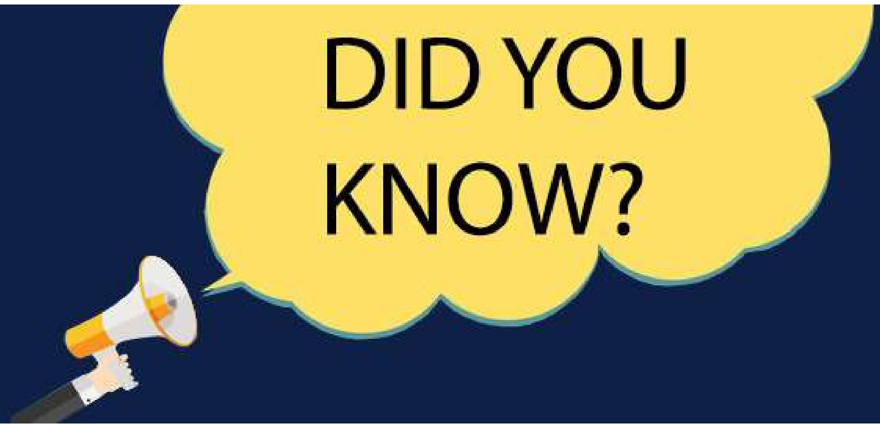
Issue:

Is the surrender value of the Keyman Insurance Policy taxable as income in the hands of the recipient and not exempt as per provisions of s. 10(10D) of the Income Tax Act 1961.

Decision:

1. The CIT(A) observed that s. 10 of the ITA is entitled 'incomes which do not form a part of total income'. Thus, s. 10 stipulates all those incomes which are not to be included in total income. This section excludes those sums from income, which are received under a life insurance policy, including the sum allocated by way of bonus of such policy. However there are certain incomes which are specifically excluded i.e these sums are not excluded from income. s. (10D)(b) specifically mentions the keyman insurance policy. Thus, sums received under keyman insurance policy are to be treated as income. This is provided by clause (ix) of s. 2(24).
2. During the course of the assessment proceedings, the Ld. Counsel for the taxpayer relied on the case of Rajan Nanda[8]. However, the AO distinguished this case on the lines that no premium was paid by the taxpayer to continue the policy after assignment and only encashed the surrender value. In the case of Rajan Nanda (supra), on assignment, the director did not surrender the policy to LIC, but chose to continue the policy by making payments for the remainder of the policy.
3. Based on the observations above, the Tribunal held that the device adopted by the assessee by assigning the policy & encashing the same is a colourable device adopted by the taxpayer to evade tax.
4. Before the Court, the Sr. Counsel for the revenue submitted that the taxpayer had never paid any premiums on assignment. After assignment to the taxpayer, the policy was immediately encashed. Emphasis was laid on Explanation 1 to s. 10(10D) inserted by Finance Act 2012 and further amendment of Explanation 1 by Finance Act 2013, w.e.f 1.04.2014 wherein it was clarified that Keyman Insurance policy will continue to bear the character of Keyman Insurance Policy even though it is Life Insurance of Key employees of the Company & therefore, the surrender value will be an exception to s. 10D(D) and the income received by the taxpayer would continue to be taxable. The Counsel also held that the decision in the case of Ranjan Nandan was undone by the Parliament and not applicable.
5. The Keyman Insurance Policy taken by a Private Limited Company in favour of it's Managing Director of the company even though it is Life Insurance policy is excluded from the ambit of exemption under s. 10(10D) by specifically mentioning the same in clause (b) of the said exception of the provision quoted above. Therefore, any amount received under the Keyman Insurance Policy is a taxable receipt in the hands of the employee.

[8]Rajan Nandan [2012] 18 Taxmann.com 98 (Delhi)



News About Taxation You Need to Know Right Now!

1. The Confederation of Indian Industry (CII) has made a recommendation to reintroduce the single structure of income tax instead of the present dual structure in the Budget 2021.
2. A second Budget Proposal put forth by CII is reduction in tax rates for individuals to tide over the job losses caused during the COVID – 19 pandemic.
3. India has challenged the Vodafone arbitration ruling in Singapore in USD 2 billion tax dispute.
4. Finance Minister Nirmala Sitharaman tweeted saying that *“Demonetisation not only brought about transparency and widened the taxbase, it also curbed counterfeit currency and increased circulation”*

Due dates for Compliance under Income tax

7th Jan 2021

- Due date for deposit of Tax deducted/collected for the month of December, 2020. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

10th Jan 2021

- Return of income for the assessment year 2020-21 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.

  Note: The due date for filing of return has been extended to January 10, 2021 vide Press Release, dated 30-12-2020.

14th Jan 2021

- Due date for deposit of TDS for the period October 2020 to December 2020 when Assessing Officer has permitted quarterly deposit of TDS under section 192, section 194A, 194D or 194H

15th Jan 2021

- Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of November, 2020
- Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of November, 2020
- Due date for issue of TDS Certificate for tax deducted under section 194M in the month of November, 2020
- Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21.

  Note: The due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction has been extended to January 15, 2021 vide Press Release, dated 30-12-2020.
- Quarterly statement of TCS for the quarter ending December 31, 2020

30th Jan 2021

- Quarterly TCS certificate in respect of quarter ending December 31, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of December, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of December, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2020

31st Jan 2021

- Quarterly statement of TDS for the quarter ending December 31, 2020
- Furnishing of declaration to opt for Vivad se Vishwas Scheme.

Notifications & Circulars

Circulars :

1. The CBDT has issued a circular regarding the allowable deductions from salary for the FY 2020-21.
   https://www.incometaxindia.gov.in/communications/circular/circular_20_2020.pdf
2. Clarifications regarding the Vivad se Vishwas Act, 2020 was also issued by the CBDT.
   https://www.incometaxindia.gov.in/communications/circular/circular-21-of-2020.pdf

Corporate Office

PUNE
201, Tower S4, Phase II,
Cyber City, Magarpatta Township,
Hadapsar
Pune 411013 - India
912026898860|Tel
91 20 2689 9980 |Fax

Branch Offices

MUMBAI
203, 2ndFloor,
Mahinder Chambers
W T PatilMarg,
Opp Dukes factory, Chembur,
Mumbai 400071 - India
91 22 2520 0561 | Tel
91 22 2520 5992 | Fax

GURUGRAM
248, 2nd Floor, Tower – B,
Spazedge Commercial Complex
Sector 47, Sohna Road,
Gurugram 122001 - India
91 12 4407 8407 | Tel
91 12 4407 9407 | Fax

International Offices

JAPAN
Komiyama & Co.
3-6-9 Roppongi Minato-KU
Tokyo, 106-0032, Japan

ITALY
Studio Vienna
Via Hoepli 3 - 20121
Milano, Italy

GERMANY
btu - beraterpartner Group
Feldbergstraβe 27-29
D-61440, Oberursel, Germany

FRANCE
OCA - Organisation Conseil Audit
63, Avenue de Villiers
75017, Paris, France

UAE
TCA International FZE
Office No 214,
Business Center 2,
RAK Free Trade Zone,
RAS AL Khaimah, UAE

VIETNAM
BHG
#1B/176 - Doi Can Street,
Ba Dinh District, Hanoi, Vietnam

SPAIN
Trebeki
Juan de Ajuriaguerra
6, 1, IZQ
48009, Bilbao, Spain