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TAXATION TIMES

September 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.

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Introduction

As per a report published by Cushman & Wakefield, India has emerged second in Global Manufacturing Risk Index. This indicates a growing interest in India by manufacturers. This year India has switched places with US – taking it one rank higher from the rankings released last year. Though, India has upright attributes to become the most sought after manufacturing hub, the Government needs to develop a holistic and more friendly environment for manufacturing companies to set up in India.

Turning back to this edition Taxation Times, here's what we have :

- > One cycle of the faceless assessment regime has been completed, lets take a look as to what exactly is the scheme and could it live upto taxpayer expectations;

- > Judicial precedents from the Tribunals and High Courts;

- > Tax news from around the world;

- > Upcoming compliances for October 2021;

- > Circulars & notifications for September 2021.

We hope that you find this edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!

Best Regards,
UJA Tax Team



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One Year to the Faceless Assessment Regime

The Indian Government has embarked upon its journey on digitalization of the governance process a long time ago in the year 2006 with the launch of the projects for e-filing of income tax returns. However, this journey has gained momentum since the last few years. In 2017, Goods and Service Tax (GST) was introduced and on the direct tax front – the CBDT implemented e-assessment scheme which slowly transitioned into the faceless assessment scheme.

The main object and intent of the Faceless Assessment scheme was:

- to eliminate the physical interface between the Assessing Officer and the taxpayer
- promote efficient tax administration
- increase accountability and transparency.

The introduction of the Faceless Assessment Scheme was a major tax reform and India is one of the few countries to adopt such a system.

A faceless assessment is facilitated through separate units within the tax department such as the Regional e-Assessment Centre, Assessment Unit, Verification Unit, Technical Unit, Review Unit. The National e-Assessment Centre (NeAC) administers and centrally controls the e-assessment. It is the single point interface which is responsible for communicating with the taxpayers and the different units of the taxpayers.

The Income Tax Departments IT system randomly selects cases for scrutiny assessment using risk based criteria which are identified by data analytics. Thereafter, the NeAC issues notices to taxpayers seeking information from them.

Once the information is received from the taxpayers, the same is then passed to a specific Assessment Unit is a ReAC allotted through automated allocation system. The NeAC will share the report received from the verification unit or technical unit to the concerned assessment unit. The taxpayer shall also have an option to have an opportunity of a personal hearing through video conferencing. Once, the assessment is completed, the Centre shall transfer the records to the jurisdictional Assessing officer for further proceedings i.e tax recovery, penalty imposition etc.

It is expected that the anonymous nature of the method can discourage high pitched assessments and can result in objective and truthful assessments. Under this system, the human interface is eliminated i.e the taxpayers will not be required to go to the territorial jurisdiction income tax officer. This arrangement is expected to increase the transparency in the tax administration system and evoke a hassle free and harassment free assessment experience to honest taxpayers.

Even though, the faceless assessment scheme was implemented to improve the efficiency and effectiveness of the tax administration, the completion of the first year faceless assessment season has not been very smooth. Now that the tax department is aware of the taxpayer hardships, immediate efforts should be taken to smoothen out these in order to regain taxpayer confidence.

Case Law

Taxpayer is entitled to claim deduction under s. 24(b) of the Income Tax Act 1961 in respect of interest paid on borrowed capital even if the property in question was not in possession of the taxpayer.

Facts

The taxpayer¹ in his return of income filed for AY 2015 – 2016 had under the head 'income from House Property' claimed deduction of interest paid on borrowed capital of INR 2 lakhs under s. 24(b) of the Income Tax Act 1961 ('ITA'). The deduction of interest paid on borrowed capital pertained to funds which were borrowed by him for purchasing a residential property. The Ld. Assessing officer ('AO') noted that the taxpayer had not taken possession of the property under question, therefore, disallowed the claim of deduction of interest under s. 24(b) of the ITA. The Ld. Commissioner of Income Tax Appeals [CIT(A)] upheld the disallowance of the taxpayers claim for deduction under s. 24(b) of the ITA. The taxpayer being aggrieved with the order by the CIT(A) preferred an appeal before the Hon'ble Income Tax Appellate Tribunal ('ITAT').

Issue

Is the taxpayer entitled to deduction in respect of interest on capital borrowed under s. 24(b) of the ITA when the taxpayer has not received possession of the property for which deduction has been claimed.

Decision

1. The Ld. CIT(A) while upholding the disallowance made by the AO observed that the property in respect of which the taxpayer has claimed deduction under s. 24(b) of the ITA is neither in his possession nor has he any sort of physical domain over the same. Infact, due to an ongoing litigation between the taxpayer and the society/ builder the taxpayer is not in a position to take control/domain of the impugned property. The Ld. CIT(A) further stated that s. 24(b) pre-supposes that there should be an income under the head house property against which deduction of municipal taxes can be claimed. In the instant case, due to the ongoing litigation, the taxpayer is not entitled to get any control on the said property and therefore there is no likelihood of having income thereon. An given the facts of the case, there is an increased likelihood that for several years, the appellant would not be in receipt of income from house property but still continue to claim deduction under s. 24(b) in respect of interest.

2. The Hon'ble Income Tax Tribunal perused the provisions of s. 24(b) of the ITA and observed that as per provisions of s. 24(b), a taxpayer shall be entitled to claim deduction of any interest payable on borrowed capital by him for acquiring, constructing, repairing, renewing or reconstructing a property. In the instant case, the taxpayer has acquired the property vide an agreement in 2009 and the provisions of s. 24(b) nowhere state that possession of property is a pre-condition nor an eligibility criteria to take deduction of interest. Insofar, the 1st and the 2nd proviso to s. 24(b) are concerned, the same only contemplate an innate upper limit of the amount of deduction qua the properties referred to in s. 23(2) of the ITA i.e a residential house. However, the said provisos in no way jeopardizes the entitlement of the taxpayer to claim deduction of interest payable by him on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing a residential house property which does not fall within the realm of s. 23(2) of the ITA.

3. The Hon'ble ITAT further held that the observation of the Ld. CIT(A) that in the absence of any control/domain over the property in question, the taxpayer will not be in receipt of any income from the same & therefore, deduction under s. 24(b) would not be allowable is not acceptable. It was further held that the view of the of the CIT(A) is misconceived and divorced of any law. S. 22 r.w.s 23 of the ITA is dependent on 'ownership' irrespective of possession. From a plain literal interpretation of s. 24(b) of the ITA, there is no bar on the taxpayer to claim deduction of interest on loan for purchasing residential property even if possession of the same will not be vested with him.
4. Accordingly, the claim of interest under s. 24(b) of the ITA is allowable.

When the taxpayer² being a HUF sold an agricultural land and out of the sale proceeds of the agricultural land, a new agricultural land was purchased in the name of the co-parcener of the taxpayer, the taxpayer is still eligible to claim deduction under s. 54B of the ITA.

1 *Abeezar Faizullahoy V/s CIT (ITA No. 4831/MUM/2019)*

2 *Babubhai Arjanbhai Kanani (HUF) V/s DCIT [2021] 130 taxmann.com 112 (Surat – Trib)*

Facts

The taxpayer is a Hindu Undivided Family (HUF) and during the year under consideration, it derived income from long term capital gain on sale of property. The return of income was processed under s. 143(1) of the Income Tax Act 1961 ('ITA') and the case was selected for scrutiny through CASS. During the course of the assessment proceedings, the Ld. Assessing Officer ('AO') observed that the taxpayer had claimed exemption under s. 54B of the ITA. The AO noted that the property had been registered in the name of the co-parcener who is an individual, however the land was shown in the balance sheet of the taxpayer. The land was purchased utilizing the funds of the taxpayer which were transferred to the bank account of the co-parcener. Before the Ld. AO, the taxpayer stated that as per law & custom of the Hindu Succession Act, any property which is purchased out of the fund or earning of HUF always remain under the ownership of HUF and all the members of HUF have a right in that property. Reliance was placed on the decision of *K S Subbiah Pillai HUF*.³

The Ld. AO stated that the Hindu Succession Act is not applicable in the present case as the property has been purchased in the name of the individual with their individual PAN. If the property has been purchased by the individual, the same can be sold by that individual alone and not the karta or the co-parceners of HUF. Accordingly, keeping in mind the said background, the Ld. AO rejected the exemption claimed by the taxpayer under s. 54B of the ITA.

The taxpayer preferred an appeal before the Hon'ble CIT(A) who also upheld the disallowance made by the AO.

Aggrieved, the taxpayer has preferred an appeal before the Hon'ble Income Tax Appellate Tribunal ('ITAT')

Issue

Can the taxpayer HUF claim exemption under s. 54B of the ITA in respect of an agricultural land which was registered in the name of the co-parcener but was purchased out of the funds of the taxpayer.

Decision

1. Before the Ld. AO, the taxpayer relied on the decision of *Ms. Haria Kapur V/s Shri Rakesh Kapur & Ors*⁴ and *Sanwal Das V/s Kuremal & Ors*.⁵ The Ld. Counsel for the taxpayer before the Hon'ble ITAT submitted that the property was purchased out of the value of agricultural land sold and further

the same was accounted for in the books of HUF and, therefore, the conditions of provisions of s. 54B stand fulfilled. Merely because, the property was purchased in the name of the co-parcener of the HUF, the deduction under s. 54B cannot be disallowed.

2. The Ld. Counsel for the revenue primarily reiterated the stand taken by the Ld. AO.
3. The Hon'ble ITAT observed as under:

- in the instant case the purchase of property was out of the funds of the HUF and has been shown in the books of accounts of HUF. The HUF had shown agricultural income in the year when property was purchased and in the subsequent years. The agricultural income was not shown in the hands of individual, however, it is shown in the hands of HUF. The co-parcener of the HUF may hold property on behalf of the HUF. The taxpayer purchased agricultural land out of the sale proceeds of the agricultural land sold and after that the taxpayer has claimed exemption under s. 54B of the ITA in respect of the land purchased. The funds utilised for purchase of land pertain to HUF and the same was transferred from bank account of HUF to bank account of individual. As per Hindu Succession Act, property purchased out of HUF funds or earning of HUF always remained under ownership of HUF and all members of HUF has right in that property. Thus, in the instant case, the fruit of the property is enjoyed by the HUF.

- From the provisions of s. 54B of the ITA it is explicitly clear that a HUF may sale agricultural land and purchase agricultural land and claim exemption under s. 54B of the ITA. However, HUF is an artificial person, like limited company. All the activities of a limited company are performed by its directors, likewise, all the activities of HUF are performed by its member of HUF. Therefore, the purchase of agricultural land or sale of agricultural land are to be done by members of HUF, on behalf of HUF. In the instant case the entire purchase consideration for agricultural land was paid by utilizing fund of HUF, therefore, agricultural land so purchased belongs to HUF. Just because the

3 *CIT v. K. S. Subbiah Pillai HUF* (1984) 147 ITR 87 (mad)

4 *Ms. Haria Kapur v. Sh. Rakesh Kapur & Ors. CS (OS) 1353/2009*

5 *Sanwal Das v. Kuremal and Ors. Reported in AIR 1928 Lohare 224*

agricultural land was registered in the name of individual member of HUF, does not mean that it is not a property of HUF and the HUF cannot claim exemption under section 54B of the ITA.

- The Hon'ble Punjab & Haryana High Court in the case of *Gurnam Singh*⁶ held that the purchased land was being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, it did not make any difference because the purchased land was still being used by the assessee for agricultural purposes. It was not the case of the revenue that the said land was being used exclusively by his son. On similar facts, The Hon'ble Rajasthan High Court in the case of *Laxmi Narayan*⁷ stated that where assessee had purchased new agricultural land out of sale consideration of his agricultural land, assessee could not be denied deduction under section 54B merely because registered document of new land was executed in name of his wife.

- In the case of the taxpayer, the entire purchase consideration for agricultural land was paid by utilizing money of HUF. The Purchase Deed is in the name of the Coparcener (one of the HUF members). However, the property (land) is owned by HUF. The property (land) is shown in the Balance Sheet of HUF. The co-parcener of the HUF may hold property on behalf of the HUF. The HUF money was utilized to purchase the said agricultural land. The HUF is doing agricultural activities. HUF is also an artificial person which cannot talk, walk and think, however, the Coparceners (member of HUF) do all the activities on behalf of the HUF. In substance, the HUF is owner of the said agricultural land though it is registered in the name of the Coparcener, as the HUF is enjoying all the fruits of the said agricultural land. Thus, the HUF is entitled to claim exemption/ deduction under section 54B of the Act.

Accordingly, the disallowance upheld by the AO was deleted.

6 *CIT v. Gurnam Singh* [2008] 170 Taxman 160/[2010] 327 ITR 278 (Punj. & Har.)

7 *Laxmi Narayan v. CIT* [2018] 89 taxmann.com 334/402 ITR 117 (Raj.)

Tax in the News

White House Analysis says wealthy Americans pay far less taxes than others.

<https://www.reuters.com/business/finance/white-house-analysis-says-wealthy-americans-pay-far-less-taxes-than-others-2021-09-23/>

India – US bilateral advance pricing agreements and tax benefits for US multinationals.

<https://mnetax.com/india-us-bilateral-advance-pricing-agreements-and-tax-benefits-for-us-multinationals-45689>

A global tax deal is coming, and things will never be the same again.

<https://www.livemint.com/politics/policy/how-new-global-tax-rules-may-reshape-india-11632329144669.html>

G-24 warns that global tax deal will fail without better terms for developing countries

<https://mnetax.com/g-24-warns-global-tax-deal-will-fail-without-better-terms-for-developing-countries-45752>

Asia to see disparate impacts from global tax reforms, IMF reports

<https://mnetax.com/asia-to-see-disparate-impacts-from-global-digital-tax-reforms-imf-reports-45695>

Circulars, Notifications & Press Release

Notifications

The CBDT inserts Rule 26D of Income-tax Rules, 1961 called as the Income tax Amendment (26th Amendment) Rules), 2021 in respect to section 194P and 206AB r.w.s. 295 of the Income Tax Act, 1961 pertaining to declaration and evidence of claims by specified senior citizen.

https://incometaxindia.gov.in/communications/notification/notification_99_2021.pdf

The CBDT inserts Rule 14C of Income-tax Rules, 1961 called as the Income tax Amendment (26th Amendment) Rules), 2021 wherein where an assessee or any other person submits an electronic record by logging into his registered account in designated portal of the Income-tax Department, it shall be deemed that the electronic record has been authenticated under electronic verification code.

https://incometaxindia.gov.in/communications/notification/notification_99_2021.pdf

The CBDT amends Rule 11UAC of Income-tax Rules, 1961 called as the Income tax Amendment (28th Amendment) Rules), 2021. They shall come into force from the 1st day of April, 2022 and shall be applicable for the assessment year 2022-23 and subsequent assessment years.

<https://incometaxindia.gov.in/communications/notification/notification-no-105-2021.pdf>

The Central Government hereby notifies that no deduction of tax shall be made on the following payment under section 194A of the said Act, namely payment in the nature of interest, other than interest on securities, made by a scheduled bank (hereinafter the “payer”) located in a specified area, to a member of Scheduled Tribe (hereinafter the “receiver”) residing in any specified area, as referred to in clause (26) of section 10 of the said Act, subject to the certain conditions.

<https://incometaxindia.gov.in/communications/notification/notification-no-110-2021.pdf.pdf>

The Central Government hereby specifies the pension fund, namely, the BCI IRR India Holdings Inc., (hereinafter referred to as —the assessee)) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as —said investments)) subject to the fulfillment of the certain conditions.

<https://incometaxindia.gov.in/communications/notification/notification-no-114-2021.pdf>

Press Release

The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to extend timelines for compliances under the Income-tax Act, 1961.

<https://pib.gov.in/PressReleasePage.aspx?PRID=1755936>

CBDT issues clarification regarding carry forward of losses in case of change in shareholding due to strategic disinvestment.

<https://pib.gov.in/PressReleasePage.aspx?PRID=1753960>

CBDT extends due dates for filing of Income Tax Returns and various reports of audit for Assessment Year 2021-22

<https://pib.gov.in/PressReleasePage.aspx?PRID=1753603>

Upcoming Compliances for September 2021

7 October 2021

Due date for deposit of tax deducted/collected for the month of September, 2021

Due date for deposit of TDS for the period July 2021 to September 2021 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

30 October 2021

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of September, 2021

Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2021

15 October 2021

Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2021 has been paid without the production of a challan

Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194-IA and 194M in the month of August, 2021

Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending September, 2021

The due date for furnishing of quarterly statement of foreign remittances for Quarter ending September, 2021 has been extended from October 15, 2021 to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

Quarterly statement of TCS deposited for the quarter ending September 30, 2021

Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2021

The due date for uploading declarations has been further extended from October 15, 2021 to December 31, 2021 vide Circular no. 16/2021, dated 29-08-2021

31 October 2021

Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2020-21

Quarterly statement of TDS deposited for the quarter ending September 30, 2021

Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)

Copies of declaration received in Form No. 60 during April 1, 2021 to September 30, 2021 to the concerned Director/Joint Director

Due date for filing of return of income for the assessment year 2021-22 if the assessee (not having any international or specified domestic transaction) is (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 the spouse of such partner if the provisions of section 5A applies

The due date for furnishing of return of income for Assessment Year 2021-22 has been extended from October 31, 2021 to November 30, 2021 vide Circular no. 9/2021, dated 20-05-2021 and further extended from November 30, 2021 to February 28, 2022 vide Circular no. 17/2021, dated 09-09-2021

Upcoming Compliances for September 2021

31 October 2021

Audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E

The due date for furnishing of audit report for Assessment Year 2021-22 has been extended from October 31, 2021 to November 30, 2021 vide Circular no. 9/2021, dated 20-05-2021 and further extended from November 30, 2021 to January 31, 2022 vide Circular no. 17/2021, dated 09-09-2021

Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.

The due date for furnishing of report has been extended from October 31, 2021 to November 30, 2021 vide Circular no. 9/2021, dated 20-05-2021

Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on October 31, 2021).

31 October 2021

Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on October 31, 2021).

Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2019-20 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is October 31, 2021).

Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company does not have any international/specified domestic transaction]

Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2021)

The due date for filing of audit report for Assessment Year 2021-22 has been extended from September 30, 2021 to October 31, 2021 vide Circular no. 9/2021, dated 20-05-2021

Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 with additional charge

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