R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

August 2024

"Someone is sitting in shade today because someone planted a tree longtime ago"

-Warren Buffet.

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Circular No. 08/2024

Dated as on August 5, 2024.

Non-applicability of higher rates of Tax Deducted at Source (TDS) or Tax Collected at Source (TCS) under sections 206AA and 206CC of the Income-tax Act, 1961.

This circular is relevant in cases where the deductee/ collectee has passed away before linking their PAN with Aadhaar, a requirement to avoid higher TDS/TCS rates.

1. A previous circular (No. 06/2024) allowed taxpayers until May 31, 2024, to link their PAN and Aadhaar to avoid higher tax rates.

2. Taxpayers raised grievances where the deductee/collectee died before the PAN-Aadhaar linkage could be completed, leading to tax demands on the deductor/collector.

3. The CBDT clarified that in cases where the deductee/collectee died on or before May 31, 2024, and the PAN-Aadhaar linkage was not done, the deductor/collector will not be liable to deduct or collect higher TDS/TCS rates under sections 206AA/206CC.

4. The applicable provisions of Chapters XVII-B and XVII-BB will govern the tax deduction/collection in such cases.

PRESS RELEASE

Press Release, Dated 20-8-2024

Central Board of Direct Taxes (CBDT) misinformation regarding the requirement for an Income-Tax Clearance Certificate (ITCC) before leaving India.

It clarifies that not all Indian citizens need to obtain an ITCC. Only those who are required to obtain this certificate are domiciled in India and

(a) Are involved in serious financial irregularities or;

(b) Who have direct tax arrears exceeding ₹10 lakh (and not stayed by any authority)

This requirement has been in place since 2003 and remains unchanged, even after the amendments introduced by the Finance (No. 2) Act, 2024.

-Compiled by Ayyaz Surve

CASE LAW 1:

Issue Involved:

Eligibility for Exemption under Section 54G: Where assesse shifted his business undertaking from urban area to rural area and made further investment of certain amount in new business and Assessing Officer disallowed same on ground that new investment was made in partnership firm and not by assesse, since assesse was a partner in said partnership firm and had total right in investment of firm, he was eligible for exemption under section 54G.

IN THE ITAT RAJKOT BENCH

In the case of Hasmukhbhai Makanbhai Padariya

V/s.

Income Tax Officer

[ASSESSMENT YEAR 2016-17]

AUGUST 6, 2024

Facts of the case:

- The assessee has invested amount of Rs.1.22 crores in the firm named OMC , as a partner and same was utilized in construction of building and purchasing of new plant and machineries. The assesse filed a return of income declaring total income and claimed a deduction of 1,15,94,133 under Section 54G of the Income Tax Act.

- The claim was that, by becoming a partner in OMC, which was a new industrial undertaking located in a rural area, the assessee had complied with the conditions for Section 54G.

- The assessee argued that the main conditions of Section 54G were fulfilled, including the shift of the business to a rural area and the making of further investments.

- The Assessing Officer rejected the claim, stating that since the investment was made in a partnership firm (OMC), which is considered a separate entity under the Income Tax Act, the conditions for claiming the deduction under Section 54G were not satisfied. Consequently, the Assessing Officer disallowed the deduction and added the claimed amount to the assessee's income.

Conclusion held:

The court recognized that the investment made in the partnership firm (OMC) and the firm's subsequent use of those funds for construction and purchasing machinery were in line with the intent of Section 54G for deduction, even if the deduction is claimed by the partner of the firm. Since, the firm name is only a compendious name given to the partnership for the sake of convenience the assets of the firm belong to and are owned by the partners of the firm.

The addition made by the Assessing Officer was found to be incorrect and was later deleted, and the assessee's claim for the deduction under Section 54G was allowed. The court's decision recognized the substantial compliance with the intent and requirements of Section 54G, affirming the assessee's entitlement to the exemption despite the investment being routed through a partnership firm.

-Compiled by Subrat Mohanty

CASE LAW 2:

Issue involved:

Where the assessee received a lump sum amount from company towards full and final settlement of all disputes and differences with it and in terms of settlement agreement, assessee unconditionally and irrevocably relinquished all his rights in respect of registration of shares held by him and to consequently hand over share certificates in original to company, said settlement amount was not liable to be construed as payment connected to termination of assessee's employment and, thus, was liable to be recognized as capital gains.

HIGH COURT OF DELHI

Akash Poddar

v.

ACIT

. IT APPEAL NO. 270 OF 2023

AUGUST 7, 2024

Facts of the case:

- The appellant worked for Tek Travels Pvt. Ltd. (TTPL) from December 1, 2007, to August 24, 2010, and was entitled to sweat equity as per his employment agreement.

- Shares were issued to the appellant on June 8, 2010, but shortly thereafter, his employment was terminated. Following termination, TTPL refused to recognize the appellant as a shareholder and did not include his name in the company’s register.

- The appellant approached the Company Law Board (CLB) to resolve the dispute over his shareholder status. The matter was eventually settled through a Settlement Agreement dated January 23, 2014.

- Under this agreement, the appellant agreed to relinquish all claims to the shares and received INR 3.03 crores as full and final settlement.

- The appellant classified the settlement amount as Long Term Capital Gains (LTCG) in his tax return. However, the Assessing Officer (AO) categorized it as salary income under Section 17(3)(iii) of the Income Tax Act, arguing it was compensation related to employment termination.

- The Commissioner of Income Tax (Appeals) (CIT(A)) ruled that the settlement amount should

be treated as capital gains, as it was compensation for relinquishing the shares, which were considered a capital asset.

- The Income Tax Appellate Tribunal (ITAT) bifurcated the settlement amount, treating part as capital gains (for the shares the appellant was entitled to) and the remainder as salary income.
- The appellant challenged the Tribunal's bifurcation, arguing it was improper. The appellant's counsel contended that the entire amount should be treated as capital gains or, alternatively, not taxable at all, as it was compensation for relinquishing a right to sue.
- The court observed that the Tribunal's bifurcation lacked justification and failed to address the main issue, which was the relinquishment of share rights rather than employment termination.
- The court found the Tribunal's bifurcation unjustified and erroneous, emphasizing that the entire settlement amount should be recognized as capital gains due to its connection to the relinquishment of share rights, not employment termination.

Conclusion Held:

- The court set aside the Tribunal's order and ruled that the settlement consideration should be assessed as capital gains. The Tribunal's bifurcation was unjustified and had no basis in the arguments or submissions made before it. The Settlement Agreement indicated that the amount was compensation for relinquishing rights, not a salary payment. The assessment should reflect the true nature of the settlement, related to the shares and not to employment compensation.

~ **Compiled by Apurva Shrivastava**

CASE LAW
Goods & Service Tax
A P Enterprises v. Sales Tax Officer Class II/AVATO
(HIGH COURT OF DELHI)
Date of Judgment/Order - 31/07/2024

Brief of the case

The petitioner challenged a Show Cause Notice (SCN) dated 13.11.2023, which proposed the cancellation of their Goods and Services Tax (GST) registration, and a cancellation order dated 24.11.2023, which canceled the registration retroactively from 03.04.2023. The petitioner appealed the cancellation order, but the appeal was dismissed on 30.05.2024. The petitioner could not pursue further appeal due to the non-constitution of the GST Tribunal. The SCN alleged a violation of Rule 86B, but did not provide specific details or evidence regarding the alleged violation. It only referred broadly to Rule 21(g) and did not suggest a retrospective cancellation. The cancellation order cited additional grounds not mentioned in the SCN, including a report that the petitioner's firm was non-functional. This report was not shared with the petitioner, nor was it part of the original SCN.

Court's Findings:
The SCN lacked specific details required for a meaningful response from the petitioner. The cancellation order included new reasons not originally stated in the SCN, violating principles of natural justice.

Retrospective Cancellation: The cancellation order's retrospective effect was not indicated in the SCN, making it improper. The court decided to set aside both the SCN and the cancellation order, directing the restoration of the petitioner's GST registration. The order clarified that this decision did not prevent future lawful actions against the petitioner if warranted.

The petition was allowed, and pending applications were also disposed of.

~ Compiled by Revati Pillai

RBI/2024-25/59
FIDD.CO.FSD.BC.No.8/05.02.001/2024-25
August 06th, 2024

Modified Interest Subvention Scheme for Short Term Loans for Agriculture and Allied Activities availed through Kisan Credit Card (KCC) during the financial year 2024-25

The Government of India has extended the Modified Interest Subvention Scheme (MISS) for short-term agricultural loans for the financial year 2024-25.

- **Lending rate to farmers**: Farmers who take short-term loans for agricultural purposes (such as crop loans, Animal Husbandry etc.) will be charged an interest rate of 7% on the amount they borrow.
- **Lending rate to Financial Institution:** The government will provide an interest subvention (a kind of subsidy) of 1.5% to the banks and other lending institutions that give out these loans. This means the government helps cover a portion of the interest, effectively reducing the cost for the lending institutions, which encourages them to offer loans to farmers at the lower rate of 7%.

Additional Aids & Information:

- Small and marginal farmers storing produce in accredited warehouses will receive interest subvention for up to six months post-harvest.
- Farmers affected by natural calamities will receive interest subvention on restructured loans for the first year, with normal interest rates applicable from the second year onwards. In cases of severe calamities, this benefit extends up to five years, with an additional prompt repayment incentive.
- Aadhaar linkage remains mandatory for availing short-term loans under MISS in FY 2024-25.
- Banks must capture granular data of beneficiaries and report it on the Kisan Rin Portal (KRP). Claims for interest subvention must be uploaded by June 30, 2025, duly certified by the banks' statutory auditors.

~ Compiled by Rahul Pardeshi

CASE LAW

Union Of India vs Deloitte Haskins And Sells Llp on 3 May, 2023

Background: The Hon'ble Supreme Court of India recently ruled on the case involving Deloitte Haskins and Sells LLP, addressing allegations of professional misconduct and failure to fulfill auditing obligations as per the Companies Act, 2013.

Facts:

1. **IL&FS Defaults:** Between June and September 2018, Infrastructure Leasing & Financial Services Limited (IL&FS) experienced significant defaults, threatening India's money markets with a debt burden exceeding ₹91,000 crores.
2. **Government Action:** The Central Government issued a memorandum urging action under the Companies Act. Subsequently, the Ministry of Corporate Affairs (MCA) directed the Serious Fraud Investigation Office (SFIO) to investigate IL&FS.
3. **NCLT Actions:** On August 1, 2018, the MCA filed a petition with the National Company Law Tribunal (NCLT) to remove and replace IL&FS's Board of Directors. The NCLT agreed and appointed a new board.
4. **Reopening Books:** The MCA petitioned to reopen IL&FS's books and accounts, which Deloitte and other auditors opposed. The NCLT approved the reopening.
5. **Petition Against Auditors:** On June 10, 2019, the MCA filed another petition seeking to remove Deloitte and BSR Associates as auditors of IL&FS Financial Services Ltd. (IFIN) and debar them for five years. BSR resigned as auditor and contested the petition's maintainability, but the NCLT dismissed their plea.
6. **High Court Decision:** The Bombay High Court upheld the validity of section 140(5) of the Companies Act, which allows for the debarment of auditors. The High Court ruled that the provision should not apply to auditors who had resigned after their term. The Union of India appealed this decision to the Supreme Court.

Supreme Court Decision:

1. **Constitutional Validity:** The Supreme Court upheld the constitutionality of section 140(5) of the Companies Act, affirming that it does not violate Articles 14 and 19(1)(g) of the Constitution.
2. **Auditor Accountability:** The Court rejected Deloitte's argument that resignation ends proceedings under section 140(5). It stated that resignation does not negate the damage caused by the auditor's fraudulent conduct and that section 140(5) aims to prevent auditors from continuing to practice if they have acted fraudulently.
3. **Outcome:** The Supreme Court's ruling reinforced that auditors cannot evade accountability through resignation and emphasized the importance of maintaining rigorous standards in auditing practices.

~ Compiled by Ankita Jain.

#HUNAAR ART

~ By Ayush Shah

Allow us to tell you more!

R.C. JAIN & ASSOCIATES LLP
Chartered Accountants
Website: www.rcjainca.com

Head Office:

Mumbai - 622-624, The Corporate Centre,
Nirmal Lifestyles, L.B.S. Marg,
Mulund (W),
Mumbai – 400080.
Email: info@rcjainca.com
Phone: **25628290/91 67700107**

Branch Offices:

Bhopal - M-272, Near Arya Samaj Bhawan,
Gautam Nagar, Bhopal,
Madhya Pradesh– 462 023
Email: hmjainca@rediffmail.com
Phone: **0755-2600646**

Aurangabad - Su-Shobha, Plot No.7,
Mitranagar, Behind Akashwani,
Near Maratha Darbar Hotel,
Aurangabad - 431001.
Email: sskasliwal@gmail.com
Phone: **0240-2357556**