Tax News

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INCOME TAX

Reminder For January'10

Action Due	Due Date
TDS/TCS for the month of December'09	07-01-10
PF for the month of December'09	15-01-10
ESI for the month of December'09	21-01-10
Form No.24 C for the quarter ending on 31st December'09	15-01-10

SERVICE TAX

Reminder For January'10

Action Due	Due Date
Service Tax for the month of December'09 in case of company	05-01-2010
Service Tax for the month of December'09 in case of a company for which e-payment is mandatory	06-01-2010
Service tax for Quarter ending 31st December'09 in case of assessee other than company that makes payment electronically	06-01-2010
Service tax for Quarter ending 31st December'09 in case of assessee other than company that does not make payment electronically	05-01-2010

INCOME TAX

Vital Notifications / Changes

- **Valuation of Perquisites:**

CBDT has notified perquisite valuation rules. The Board has amended Rule 3 to give effect to the abolition of FBT, announced in Budget 2009. The new valuation guidelines would come into effect from April 1, 2009 for the AY 2010-11. For details please refer to Circular distributed through our email dated 22nd December 2009.

Recent decisions of SC/HCs

- **Taxability of Interconnect or port access facility:**

It was held that interconnect or port access facility was only a facility to use the gateway and the network of MTNL/ other companies. It was not a technical service provided by a human, so no TDS was required to be deducted as the payment was not regarded as fees for technical services.

Bharti Cellular Ltd. v. CIT (2009) 319 ITR 139 (Delhi).

- **TDS on payments by society to its members:**

Assessee was a co-operative society and its members were truck owners. Assessee entered into a contract with the companies for transportation of goods. Companies paid the amount to assessee after deducting TDS u/s 194C. Thereafter, assessee paid the amount to its members. It was held that as there was no subcontract between the assessee and its members, TDS was not required to be deducted out of payment to its members.

Ambuja Darla Kashlog Mangu Transport Co-op. Soc v. CIT (2009) 227 CTR 299.

Tribunal Judgements

- **Taxability of activities of Liaison office:**

It was held that if an activity carried out by a Liaison office in India contributed directly or indirectly to the earning of profits by the non resident, then the profit so contributed by the Liaison office would be taxable in India.

Jebon Corp. India Liaison Office v. DDIT (2009) 34 SOT 4(Breaking news).

- **Depreciation on Goodwill:**

It was held that depreciation on goodwill was to be allowed if an asset is described as 'goodwill' but fits in description of sec. 32(1)(ii).

Hindustan Coca Cola Beverages (P) Ltd. v. DCIT (2009) 34 SOT 171.

- **Disallowance of expense under completed contract method:**

It was held that in case assessee was following completed contract method and any expenditure was found to be not allowable, then Assessing officer should correct the amount of work in progress by reducing or increasing work in progress as the case may be.

- **Allowability of TDS:**

It was held that in case TDS was deducted out of income which was otherwise not liable for tax, then credit of TDS would be allowed even if the income earned by the assessee had not been offered for tax as it was not liable for tax.

Supreme Renewable Energy Ltd. v. ITO (2009) 185 Taxman 3.

- **Taxability of salary income of crew supplied by a non-resident company**:

The assessee - Maersk Co. Ltd. (MCL) - a UK based foreign company, entered into a contract for supply of Platform Vessel (PSV) to ONGC and received hire charges for it. Under the contract, MCL was also to provide crew members which it obtained from a group company - Rederiet A. P. Motor (RAPM) - a Denmark based company, which does not have a PE in India. The salary of the crew members was paid by RAPM. The issue was whether salary of crew members would be taxable in India treating the assessee as their agent. The assessee contended that it was a non-resident and hence could not be treated as an agent. It was also contended that the stay of the crew members being less than 183 days, the salary was exempt from taxation in India by virtue of Article 16(3) of the Indo-Danish DTAA.

The Tribunal held that a non resident could not be treated as an agent of a non resident. It was not established that MCL was controlling the working of crew members. MCL had no PE in India. Moreover, the personnel were paid by a group company and were taxed in Denmark, therefore they are not taxable In India.

2009-TIOL-793-ITAT-DEL in Income Tax.

Advance Rulings

- **Taxability of contract to grant use of know-how:**

Assessee, a non-resident company, engaged in the business of supplying advance technology, entered into a contract with an Indian company to grant it a non-exclusive, perpetual, irrevocable right to use the know-how as well as transfer of ownership, in designs and patterns, required to manufacture radial tyres. Ruling was given that:

a) Transfer of documentation was a step towards transfer of technical know-how, and the transferee acquired the right only on the receipt of documents in India. Therefore, transfer of know-how and grant of the right to use this know-how, was covered under Sec.9 of the Indian Income Tax, and would be taxable as royalty under Sec. 9 of the Act.

b) Consideration for transfer of ownership of designs and patterns could not be subjected to tax under DTAA provisions between India and USA.

c) Consideration for consultancy, assistance and training would be taxable as fees for included services under DTAA, while the fees for taxable under the Income Tax Act.

d) Since the agreement between the applicant and Indian company was in respect of matters covered by the Industrial Policy of the Government of India, tax would be deducted @10% on the amounts received under the contract less the transfer of ownership in designs and patterns.

International Tire Engineering Resources LLC, In re (2009) 319 ITR 228 (AAR).

- **Capital gain on transfer of shares:**

Assessee was a US company which transferred its equity shares in three Indian companies to another US company without any consideration under the reorganization plan following bankruptcy policy. It was held that it is not chargeable to capital gain u/s 45 of the IT Act.

Dana Corporation In re (2009) 227 CTR 441.

SERVICE TAX

Vital Notifications / Changes

No circular to report in this issue.

Recent decisions of SC/HCs

- **Method of CENVAT credit rules is mandatory not discretionary**:

It was held that once it is settled in the court of law that under certain circumstances, a particular method of availing cenvat credit is to be used, then assessees have to use that same method. Assessee cannot argue that as some other method was available, so assessee had the choice of claiming credit under that other method or reversing the earlier credit claimed by it.

Nicholas Piramal (India) Ltd. v. CCE (2009) 23 STT 1 (Breaking News).

- **Taxability of User fee collected by airport:**

Assessee airport charged user fees from outgoing international passengers. The issue was whether these user charges would be liable to service tax or not? It was held that since collection of user fee was not for any specific service rendered by them, but was a flat rate of charge to one category of passengers namely, outgoing international passengers, it could not be said that the amount so collected was by way of service charge. Therefore no service tax was payable for the user fee collected by the assessee.

2009-TIOL-710-HC-Kerala-ST in Service Tax.

Recent decisions of CESTAT

- **Taxability of construction of flats and transferring to land owners**:

Assessees were engaged in construction of residential complexes and were registered with service tax authorities under the taxable service categories of 'commercial or industrial construction service' and 'construction of complex service'. They were also registered with VAT under the head 'works contract' for transfer of goods involved in construction of complexes.

A demand was raised to levy service tax on construction of health and fitness centre, collection of charges for transfer of ownership of flats, collection of charges for maintenance of flats and, it was proposed to restrict utilization of CENVAT credit to 20% of output tax liability for providing both taxable and exempted services.

The Tribunal held that the health and fitness centre formed a part of the residential complex and was ultimately owned by the flat owners. The consideration paid for the fitness centre was a part of the cost of flat. Hence, the activity was not liable to service tax. It was held that there was no service involved in this transaction and hence the activity could not be regarded as an exempt service to attract the provisions of Rule 6(3)(c) of CENVAT Credit Rules, 2004. Therefore, there was no question of restricting CENVAT Credit in excess of 20%.

2010-TIOL-28-CESTAT-BANG in Service Tax.

- **Credit of CENVAT paid on mobile phones**:

The assessee company provided mobile phones to its employees for official use. Bills were in the name of the assessee company and were also paid by it. The assessee company claimed cenvat credit for the tax paid on mobile phone bills.

The tax authority denied the claim saying that on examination of bills it was not proved that phones were used only for business purpose.

The assessee submitted that the mobile phones are in the name of the assessee company and all the bills are paid by it; all the calls made by the officials are for the business activity of the company and hence the service tax paid on mobile phone bills should be allowed.

On examination of the mobile phone bills filed by the assessee, Tribunal held that from face of the bills, it could not be determined that for what purposes the mobile phones were being used. There was no finding by the authority to prove that these mobile phones were not used by the employees for business purpose only. No statement of any employee was on record with regard to the use of the phones**.** Further, the assessee company had given these mobile phones to their employee for the use of business purpose only, which was never contradicted by the authority through any evidence. Therefore assessee had given sufficient evidence to prove that the mobile phones were being given to the employees for the use of business purpose and not for any other purpose, and so credit should be allowed.

2009-TIOL-2144-CESTAT-MUM in Service Tax.

- **Taxability of service rendered to constituent of HUF**:

It was held that no service tax would be levied on the services provided by one constituent of HUF to another constituent of HUF, as it would be regarded as service to itself.

2009-TIOL-2132-CESTAT-Bang in Service Tax.

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