Tax News

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INCOME TAX

Reminder for Oct 2013

Action Due	Due Date
TDS/TCS for Sep 2013	07-10-13
PF for Sep 2013	15-10-13
ESI for Sep 2013	21-10-13
Filing of Form 24Q, 26Q, 27Q and 27EQ for the quarter ending September 2013.	15-10-13

SERVICE TAX

Action Due	Due Date
Service Tax for Sep 2013 in case of company	05-10-2013
Service Tax for Sep 2013 in case of a company for which e-payment is mandatory.	06-10-2013
Service tax for Quarter ending 30th Sept in case of assessee other than company that makes payment electronically.	06-10-2013
Service tax for Quarter ending 30th Sept in case of assessee other than company that does not make payment electronically.	05-10-2013
Half yearly Service Tax Return	25-10-2013

INCOME TAX

Important Circulars/ Notifications

- **Income Tax (15th Amendment) Rules, 2013:** As per this Circular, certain amendments have been made in the Rule 12B of IT Act, which pertains to the Statement to be furnished in respect of income distributed by a Securitisation Trust. After rule 12B, the following rule shall be inserted, namely - "12BA**.** Statement under sub-section (3) of section 115TA." Details are in *Notification No. 68/2013 dated 2-Sep-2013.*
- **Income Tax (16th Amendment) Rules, 2013:** The Central Board of Direct Taxes has specified certain "Safe Harbour Rules" through amendment in Part II, in sub part D, after rule 10T of the Income Tax Act. One of the clauses says that where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub rule (2). Details are in *Notification dated 18-Sep-2013.*

- **Income Tax (17th Amendment) Rules, 2013:** The Central Board of Direct Taxes has amended Rule 10T of the Income Tax Act, by inserting rules relating to Application of General Anti Avoidance Rules. This amendment shall come into effect from April 1, 2016. The details are in *Notification No. 75/2013 dated 23-Sep-2013.*

- **Income Tax (18th Amendment) Rules, 2013:** The Central Board of Direct Taxes has advised amendments to the Rule 44(E) of the Income Tac Act, by inserting Form No. 34EA, pertaining to Application for obtaining an advance ruling under section 245Q (1). This amendment shall come into effect from April 1, 2015. The details are in *Notification No. 76/2013 dated 24-Sep-2013.*

SC/ HC Judgments

- **Deferred Advertisement expenses:** Assessee was engaged in the business of manufacturing of Mini Computers. There were three issues in this case.
  - The assessee claimed expenses towards advertisements. In the books of account the expenses were deferred for three years. However in the computation of income full amount was claimed as revenue expenditure. AO rejected the claim on the ground that since the amount was capitalized in the balance sheet, therefore there was no justification for claiming it as a revenue expenditure. CIT (A) confirmed the order of AO. ITAT allowed the claim of assessee citing the Supreme Court decision in the case of Empire Jute Co. Ltd. wherein it was held that the test of enduring benefit alone is not conclusive for treating any expenditure as capital expenditure.
  - Assessee estimated the liability in respect of the warranty on each computer sold by it at 1.5% of the cost of sales in

respect of computers sold within the country and 5% of the cost of sales in respect of computers exported. AO disallowed the entire amount on the ground that it was contingent in nature. CIT (A) upheld the disallowance. ITAT allowed the appeal observing that a business liability had definitely arisen in the accounting year though the quantification or discharge of this liability was at a future day and the estimation by the assessee on its liability was reasonably certain.

- AO disallowed and added back royalty as unascertained liability. The CIT (A) upheld the addition made by AO. ITAT observed that assessee had made a provision for royalty payable and R & D cess. The tax deductible on this payment was duly shown as deduction in the books of account and the tax was duly deposited, so the liability to pay royalty had accrued and it was not contingent as held by the AO.

Upon appeal, the High Court held that:

- Merely because the assessee has firstly shown the entire amount in the books of accounts as deferred revenue expenditure and thereafter debited in the profit and loss account, cannot be made a ground to disallow the advertisement expenses. As per ICAI, the term "deferred revenue expenditure" is defined as the expenditure for which payment has been made or liability has been incurred in a particular year, but which is carried forward on the presumption that it will benefit over a subsequent period or periods. There is nothing to indicate that the concerned expenditure has to be of capital nature.
- Provision for warranty is rightly made by the appellant because it has incurred a present obligation as a result of past events. A reliable estimate of the obligation was also possible. Therefore, the appellant has incurred a liability, during the relevant assessment year which was entitled to deduction under Section 37 of the Act.
- Since the assessee has deducted the tax during the previous year relevant to the assessment year in question, the conditionality of section 40(a)(i) stands satisfied. *2013-TIOL-706-HC-ALL-IT*.

➢ **Higher stamp duty and lower capital gain:** The assessee disclosed sale of a capital asset at Rs. 25 lacs for which he also submitted a report from approved valuer. AO rejected the claim of assessee and held that the value adopted by the stamp duty authority (Rs. 33.7 lacs) had to be taken as fair market value and accordingly computed the long term capital gain. Before CIT (A) assessee submitted another valuation report suggesting that the actual distress sale value of the property was Rs. 17.30 lacs. The CIT (A) rejected the said valuation report as it was not submitted before AO. ITAT held that provisions of Section 50C(2) of the Act are to be read in conjunction with the provisions of Section 50C(1), and the value of capital asset as determined by the approved valuer has to be taken as the sale consideration. Upon appeal, the HC held that:

- An immovable property may have various attributes, charges, encumbrances, limitations and conditions. This property was offered for sale to the tenant, which could not have attracted fair market value. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value, instead, it goes only by the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as it occupation by tenant, any charge or legal encumbrances.

- It was necessary for the AO to refer the matter for valuation to DVO in accordance with provisions of Section 55-A. Matter is remanded to AO, to decide the valuation of the capital asset in accordance with law as explained in this judgement. *2013-TIOL-704-HC-ALL-IT*.

➢ **Shares purchased for a lock-in of 3 years:** Assessee was a private limited company engaged in the business of investments. It declared long term capital gain arising from sale of shares of 'M', an unlisted company, to two other shareholders of 'M'. Assessee claimed benefit of deduction of entire capital gain as it was invested in specified bonds u/s 54EC. AO held that the amounts earned on this sale of shares would be taxable under the head profit and gains of business and not under the head capital gains. Assessee had borrowed funds to make this investment, which no investor would do. Assessee subscribed to these shares at a price much higher than the book value. So as per AO, the consideration received on sale of shares by the assessee was in the nature of compensation for termination of the assessee's position as Manager of 'M'. Therefore, the amount was taxable under the head Business Income as provided in Section 28(ii) of the Act. CIT (A) allowed the appeal of the assesse, while the ITAT allowed the appeal of the revenue. Upon further appeal, the High Court held that:

- The assessee acquired the right to manage 'M' and in the absence of any other evidence to indicate that shares were bought for trading, the only conclusion would be that the entire transaction of purchase and sale by the assessee was on capital account. The subscribed shares were not freely transferable, there was a three years lock-in period, and if they had to be sold during the lock-in period the sale was restricted only to the other two parties. In view of these restrictions, the share purchase could not have been for trading.
- Assessee held shares for almost 31 months before selling them which indicates that these shares were not subscribed to by the assessee for the purpose of trading in them.

- Assessee had borrowed funds from outside for a period of 12 days without interest. The amounts were sourced from its sister company. The borrowing of funds is not an evidence that the assesse wanted to trade in the subscribed shares.
- Purchase of shares at a price higher than book value cannot be concluded as evidence that the purchase was not in the nature of investment. Thus, the appeal of the assessee is allowed. *2013-TIOL-698-HC-MUM-IT.*

Tribunal Judgments

➢ **Section 80IB(1) benefits available to a builder:** The assessee was a firm engaged in construction of apartments, and it claimed deduction u/s. 80IB(10) of the Act. The AO did not allow the deduction on the ground that the assessee had not submitted a completion certificate in the prescribed form from the municipal authorities. Subsequently, the assesse furnished a copy of Instruction issued by the Board wherein it was clarified that "The deduction can be claimed on a year to year basis where the assessee is showing profit from partial completion of the project in every year."

The AO observed that the firm should have completed the housing project within 5 years from the end of the financial year in which the housing project is approved by the local authority. Since the project is not completed within stipulated time, the assessee firm is not entitled to partial exemption u/s 80IB(10). Hence, the partial deduction which was to be allowed as per Instructions issued by the Board, is to be disallowed in subsequent years, if the assessee failed to complete the project by 31.03.2011. On further appeal, it was held that:

- The assessee recognised the income by estimating the percentage of income on advance received during the construction period of the block. After construction of each block, the sale of flats and construction expenditure thereof was transferred to Profit and Loss Account. This method is recognised by the Income-tax Act for disclosing the profit in the case of a builder.
- The purpose of granting deduction u/s. 80IB(10) is to promote housing projects. If we accept the proposition of the Department that the deduction u/s. 80IB(10) has to be granted only to a tax payer who follows only "Project Completion Method" then this assessee is not entitled for deduction u/s. 80IB(10) of the Act. It would tantamount to denial of valid exemption.
- In the present situation, the Revenue is taxing the profit accepting the assessee's method of accounting but suggesting to grant deduction only on completion of the project. This is not the scheme of the Act, to first tax an income in a particular year and grant deduction on that very income in a different later year i.e., on completion of the project.
    - To grant deduction u/s. 80IB(10) it is mandatory to furnish the completion certificate of the housing

project as a whole, and not for each year of assessee's claim.

- A project can have a span of 5 years from the end of the financial year it has received approval. It would not mean that the assessee can have the benefit of section 80IB(10) only in the year of completion of the project. Thus, the AO need not insist on the completion certificate in this assessment year. *2013-TIOL-779-ITAT-HYD.*

➢ **LTA and medical allowance:** The assessee made payments in respect of medical allowance, LTA, fuel reimbursement, conveyance, telephone, car maintenance and meal vouchers to its employees. The AO observed that the assessee was in default u/s 201(1). The CIT (A) deleted the demand observing that in respect of non-deduction of tax for medical reimbursement, the employees were paid up-to Rs.15000/- per annum split into monthly disbursements. This amount was treated as exempt under IT Act only if supported by bills. No instance had been brought on record to suggest that, in the case of any employee, the benefit or allowance had been allowed without TDS during the financial year, if it was not backed by actual expenditure. Merely because the same was taken into account at the beginning of the year or at the time of deciding his/her salary, it did not cease to be a perquisite and, therefore, not entitled to exemption u/s 17(2). Upon appeal, the ITAT held that:

- Assessee's obligation is only to make an "estimate" of the income under the head "salaries" and such estimate has to be a bonafide estimate. No exemption is granted in the absence of details and/or evidence. Thus the issue is decided for LTC and Medical Reimbursement in favour of the assesse.
- The TDS is not applicable on food coupons/meal vouchers. In respect of telephone bills reimbursements, vehicle maintenance, fuel consumption, conveyance allowance etc., the CIT (A) observed that it be treated as a non-taxable perquisite. Thus, order of CIT (A) is confirmed. *2013-TIOL-770-ITAT-BANG.*

➢ **Total Income computation under section 44B:** The assessee, a Hong Kong based company, was operating ships in international waters. It computed total income as per the provisions of section 44B and sec 172 of IT Act. The AO found that the assessee had not included the service tax collected by it in the gross receipt for the purpose of collection of income u/s 44B and issued a show-cause notice. The assessee submitted that the service tax cannot be treated as amount paid or payable to the assessee on account of carriage of passengers or goods etc. The Department contended that what was to be considered u/s 44B was the amount received or payable to the assessee and not the net income. Upon appeal, the **Tribunal held that:**

- Purpose of sec 44B is to simplify the determination of taxable income of the non-resident who are in the business of shipping. The presumptive profits and gain of such business chargeable to tax under the provisions of

section 44B are determined as a sum equal to 7.5% of the aggregate amounts paid or payable to the assessee on account of carriage of passengers or goods. Since the service tax received/collected by the assessee is a part of the invoices/bills raised in respect of shipping business, the exclusion of the said amount only on the ground that it has no element of profit, is not consistent with the intention of the legislature.

- Service tax is very much part of the amount received on account of the business of shipping. Therefore, the amount received on account of service tax as part of the price of carriage/shipped service is very much a trading/business receipt and would be part of the aggregate amount for presumptive profit and gain to be determined u/s 44B. ***2013-TII-162-ITAT-MUM-INTL.***

➢ **Income from Freight and Cargo Tracking Services: The** assessee, a tax resident of Denmark, was in operation of ships on international waters.

- The ships touched Indian ports and carried on 145 voyages. On being asked to furnish proof regarding ownership and/or chartering of the ships, out of 145 voyages, the assessee was able to provide evidence for the claim of Indian Denmark DTAA in 141 cases, which included ship Registration Certificates and copies of Chartered Party Agreements. With respect to 4 ships, such evidence could not be produced. The AO therefore considered the freight income earned from these 4 cases as outside scope of shipping business and calculated tax @ 10% of total freight receipts, applying Rule 10 of the Income- tax Rules, 1962. Aggrieved the assessee appealed before the Tribunal.
- In order to keep track of ships/vessels and its cargo, the assessee provided tracking service to its customers, whose cargo, it handled. The AO considered this income as Fees for Technical Services (FTS). The assessee objected that since the cargo tracking system is provided to its customers, it cannot be held as FTS, but was pure and simple income from business of shipping.

Upon appeal, the Tribunal held that:

- Business of the assessee is shipping business. If once, it is accepted it is shipping business then either the DTAA shall apply or section 44B shall apply. There is no dispute with regard to the operation of ships in international traffic in case of four ships, whose revenues were less than even 0.5% of the total revenues of the assesse. Hence, DTAA should apply to these 4 ships as well, and their revenue should not be charged to tax in India.

- Assessee only provides information regarding the whereabouts of cargo, to its agents/customers, which is different from the case (Bombay Stock Exchange) cited

by the Department's representative. Hence the addition made by the AO should be deleted. **2013-TII-156-ITAT-MUM-INTL.**

SERVICE TAX

Important Circulars / Notifications

- **Education services** – In this circular, clarifications have been issued regarding the levy of service tax on certain services relating to the education sector. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification. Circular No.172/7/2013, 19th September, 2013.

CESTAT JUDGMENT

- **Taxability of commission on arranging loans:** SAI Service Station Ltd. was an authorized dealer for cars manufactured and sold by Maruti Udyog Ltd. and also engaged in the activity of servicing, repairing the vehicles and selling spares for the vehicles. The service station received monies on the following counts and on which, the department raised Service Tax demand:
  - Commission received from various banks and financial institutions through M/s. Maruti Udyog Ltd. for promoting, marketing and selling 'Auto Finance' product under the mark 'Maruti Finance'.
  - Finance commission received from various banks and financial institutions for arranging 'Auto Finance' loan to their prospective buyers, by acting as 'Direct Sales Agent (DSA).
  - Commission received from M/s. Maruti Udyog Ltd. on account of sales/target incentive, incentive on sale of vehicles and incentive on sale spare parts for promoting and marketing the products of M/s. MUL.

The appellant submitted that the activity undertaken of 'promotion and marketing' comes under 'Business Support Service' which is made taxable with effect from 1.5.2006 and hence the demand is not sustainable. The Bench observed -

- In respect of the commission received from various banks/finance institutions for arranging auto finance loan to their prospective buyers or commission received from MUL where MUL are directly dealing with the bank/finance institutions, it comes under the business auxiliary service.
- In respect of sales/target incentive, the revenue wants to tax this activity under the category of business auxiliary service. However, these incentives are in the form of trade discount, and so

cannot be categorised under business auxiliary service. *2013-TIOL-1436-CESTAT-MUM.*

- **Business Support Services to BCCI: The** appellant was a member of the Board of Control for Cricket in India (BCCI). It received from BCCI, reimbursement under various categories such as, TV Rights subsidy, Tournament receipts, IPL subsidy players' expenses reimbursements and subsidy for international matches. These amounts were given to promote the game of cricket and also to undertake construction of infrastructure for playing cricket within the jurisdiction of the members.

  The department classified these receipts under the category of **'Business Support Services'**, and a service tax demand was raised. These notices **also** included service tax demands raised under the category of 'Club or Association and Advertising Services', 'Mandap Keeper Services', 'Renting of Immovable Property Services' and 'Sale of space or time for advertising'. The appellant submitted that it was not providing any services to BCCI and it was only affiliated to BCCI. From the BCCI's income it was given grant/subsidy for promoting cricket within the region and, therefore, the question of levy of Service tax would not arise at all. Upon appeal, the CESTAT Branch held:

  - To come under 'Business Support Services', service has to be provided in relation to business or commerce and such services are mentioned under Section 65 (104c). Revenue's contention is that by providing a cricket stadium for conducting matches to BCCI, the appellant had provided "infrastructural support services" which is a type of business support service.

  - However, the expression 'infrastructure support service' used in the said Section has to be understood to include providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and Security etc. Promotion of cricket or giving the cricket stadium for conducting cricket matches, is not similar to any of the activities specified in the said section. Further, there is no evidence to show that the services have been rendered in relation to business or commerce. Hence the demand raised by Revenue does not hold ground. 2013-TIOL-1404-CESTAT-MUM.

- **Edit and Data Fee: The a**ppellant was a part of the Reuters Group worldwide and was registered with the department under the category of 'On-Line Information and Database Access and/or Retrieval Services'. The Department noticed that the appellant had *received 'data and edit fees'* in convertible foreign exchange from M/s. Reuters Ltd., U.K., a sister-concern. It was also noticed that the appellant had purchased equipment from Reuters Ltd., U.K. and *maintained communication lines* for providing Reuter's services in India. The department was of the view that the service rendered in the form of maintenance of communication lines was classifiable as 'Maintenance or Repair Services'. It was further observed that the appellant had received *'marketing fees'* from Reuters

Transmission Services Ltd., U.K., for providing marketing and other support services in relation to Reuters' products distributed by the appellant in India and the said activity appeared to merit classification under 'Business Auxiliary Services'. A Service tax demand was raised towards "edit and data fee services' and towards "marketing and other support services".

The appellant submitted that 'Edit and data fee services' and 'marketing and other support services' were rendered by the appellant to their sister-concern in U.K. in terms of an agreement dated 24/09/2004, and the service rendered was more appropriately classifiable under 'Business Support Services'. Since 'Business Support Service' became taxable only from 01/05/2006, and the appellant had received the consideration in convertible foreign exchange, the said service would qualify as Export, and hence not liable to service tax. Upon appeal, the CESTAT held:

- As per the agreement with Reuters Limited, U.K., the service rendered by the appellant, is one of collecting, collating, verifying data and transmission of the same to the foreign-sister concern of the appellant. Thus, the service rendered by the appellant does not seem to be of the nature of any management or repair services as alleged in the Show Cause Notice. The activity of the appellant supports the business undertaken by the foreign entity abroad, and so can be classified as 'Business Support Services'.
- Business Support Services' merit classification under Rule 3(1)(iii) of the Export of Service Rules and if the services were rendered from India and consideration is received in convertible foreign exchange, then the transaction would amount to exports. On export of services, service tax liability is not attracted. *2013-TIOL-1386-CESTAT-MUM*.

➢ **Renting of Containers:** The appellant imported helium gas which is supplied in reusable and returnable containers and have to be returned to the supplier. However, during the period the containers remained in the possession of the importer, they are charged rentals for the use of the containers. The department was of the view that the renting of containers falls within the taxable service category of "Supply of goods for tangible use" and the recipient of the service in India has to discharge service tax liability on the rent which he paid to the foreign supplier. Accordingly, a service tax demand was raised. The appellant submitted that the physical possession and control of the cylinders remains with the appellant during the period of usage and, therefore, the supply of cylinders does not constitute supply of tangible goods and hence it is not taxable. The Revenue submitted that the transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods is treated as service, and hence service tax is payable. Upon appeal, the CESTAT Bench observed:

- The transaction does not involve any supply of tangible goods for use at all. The appellant imported helium gas and the helium gas has to be filled in reusable and returnable containers. The supply of cylinders is part of sale of gas and it is not a separate activity in itself and therefore, the rental charges for the cylinders form part of the value of the goods sold.

- Accordingly, the appellant has made out a strong case in its favour for grant of stay. *2013-TIOL-1378-CESTAT-MUM.*

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