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Income Tax Newsletter

November 2022

CBDT notifies Public Investment Fund as sovereign wealth fund U/s. 10(23FE)

In exercise of powers conferred by sub-clause (vi) of clause (b) of Explanation 1 to section 10 (23FE)of the Income-tax Act, 1961, the Central Government specifies the sovereign wealth fund, namely, Public Investment Fund (PAN: AAAJP1787D) as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of this notification i.e., 16th November 2022 in the Official Gazette but on or before the 31st day of March,2024 subject to the fulfilment of the following conditions, namely:-

- The assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date on which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under section 139(1) of the Act;

- The assessee shall get its books of account audited for the previous years referred to in clause (i) by an accountant specified in the Explanation below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

The assessee shall furnish a quarterly statement within one month from the end of each quarter electronically in Form II as annexed to Circular No. 15 of 2020 dated the 22nd July, 2020 with F.No. 370142/26/2020-TPL issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Tax Policy and Legislation Division), in respect of each investment made by it during the said quarter;

Notification No. 125/2022-Income Tax, dated 16th November 2022

CBDT condones delay in filing Form No.10A for which the extended due date was 31.03.2022

As per the provisions of the Income-tax Act, 1961, Form 10A was required to be filed electronically by 30.06.2021, which was extended to 31.08.2021 and further extended to 31.03.2022 by Circular No. 16/2021 dated 29.08.2021.

In view of the representations received by Central Board of Direct Taxes (CBDT) stating that Form No.10A in some of such cases could not be filed by 31.03.2022 and with a view to avoid genuine hardship to taxpayers, the CBDT condones the delay in filing of Form 10A up to 25th November,2022 in respect of certain provisions of section 12A/section 10(23C) / section 80G / section 35 of the Income-tax Act, 1961.

CBDT proposes common Income-tax Return (ITR) Form

Presently, taxpayers are required to furnish their Income-tax returns in ITR-1 to ITR-7 depending upon the type of person and nature of income. The current ITRs are in the form of designated forms wherein the taxpayers are mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not. This increases the time taken to file the ITRs and in turn may create avoidable difficulties for taxpayers.

The proposed draft ITR takes a relook at the return filing system in tandem with international best practices. It proposes to introduce a common ITR by merging all the existing returns of income except ITR-7. However, the current ITR-1 and ITR-4 will continue. This will give an option to such taxpayers to file the return either in the existing form (ITR-1 or ITR-4) or the proposed common ITR, at their convenience.

The scheme of the proposed common ITR is as follows:

a Basic information (comprising parts A to E), Schedule for computation of total income (Schedule TI), Schedule for computation of tax (schedule TTI), Details of bank accounts, and a schedule for the tax payments (schedule XP) is applicable for all the taxpayers.

b The ITR is customized for the taxpayers with applicable schedules based on certain questions answered by the taxpayers (wizard questions).

c The questions have been designed in such a manner and order that if the answer to any question is 'no', then the questions linked to this question will not be shown to him.

d Instructions have been added to assist the filing of the return containing the directions regarding the applicable schedules.

e The proposed ITR has been designed in such a manner that each row contains one distinct value only. This will simplify the return filing process.

f The utility for the ITR will be rolled out in such a manner that only applicable fields of the schedule will be visible and wherever necessary, the set of fields will appear more than once. For example, in the case of more than one house property, the schedule HP will be repeated for each property. Similarly, where the taxpayer has capital gains from the sale of shares taxable under section 112A only, applicable fields of schedule CG, relating to 112A, shall be visible to him.

As evident from above, the taxpayer is required to answer questions which apply to him and fill the schedules linked to those questions where the answer has been given as 'yes'. As a result, the time and energy of the taxpayer will be saved and he will be relieved of the additional burden of going through all the parts of the ITR as is the requirement under the existing ITRs.

CASE LAWS

Disallowance under section 14A-Expenditure against exempt income-Addition towards interest under Rule 8D(2)(ii)

Case Name : GMR Infrastructure Ltd. v. Dy. CIT

Case Number : I.T.A. No.1704&1740/Bang/2017 and Co. no.110/Bang/2017

Before AO, assessee submitted that the own funds available with it as on 31/3/2008 was Rs. 5,604.57 crores, while the investment made was Rs.4,753.34 crores. Accordingly, it was contended that the interest disallowance was not called for. However, AO noticed that the loans and advances given by the assessee to its subsidiary companies have not been considered by the assessee. AO noticed that the loans and advances stood at Rs.170.04 crores as on 31-3-2007 and the same has increased to Rs.1211.77 crores. AO aggregated both the investments and Loans & advances and then noticed that there was net increase of own funds to the tune of Rs.3,964.78 crores, while the net increase in both investments and Loans & Advances was Rs.4,478.01 crores. Accordingly, AO held that the assessee was not having sufficient own funds. With regard to the disallowance of Rs.25.00 lakhs made by the assessee towards expenses, AO held that the above said disallowance was not sufficient.

AO worked out disallowance at Rs.34,92,36,737 consisting of interest disallowance of Rs. 19,61,28,191 under rule 8D(2)(ii) and Expenditure disallowance of Rs.15,31,08,546 under rule 8D(2)(iii). Accordingly, after setting off the voluntary disallowance made by the assessee, the assessing officer added the amount of Rs. 29,70,81,132 to the total income and also while computing book profit under section 115JB of the Act.

In appeal before CIT(A), he noticed that the loans to subsidiaries amounting to Rs.85.89 crores and Advance for investments (share application money) amounting to Rs.1054.16 crores did not give rise to any tax-free income. The amount of share application money, till the time allotment is made, is in the nature of debt and hence, the same could not be considered for purpose of disallowance under section 14A, therefore, he deleted the disallowance of interest made under rule 8D(2)(ii) but confirmed the disallowance of expenses made under rule 8D(2)(iii). Aggrieved by this decision of CIT(A), revenue filed this appeal. It was held that own funds available with the assessee would become lower, only if the value of investments and the amount of Loans and advances are aggregated together. If comparison of own funds with the value of investments was done, then the own funds were more.

Hence the presumption would be that the investments have been made out of own funds, would squarely apply to the facts of the present case. The only point of difference between AO and CIT(A) related to the amount of Rs. 1140.05 crores relating to Advance for investments, which was stated to be Share Application Money. Share Application Money should not be included in the value of investments. Hence for the purpose of computing disallowance under section 14A of the Act, the Share Application Money should be excluded. Hence CIT(A) was justified in excluding the same from the value of investments, accordingly, no reason was found to interfere with the order passed by CIT(A) on this issue. Accordingly, the disallowance of interest expenses enhanced by AO was set aside. Accordingly, appeal filed by revenue rejected.

Sell of properties of borrower by bankers/ARCs – Govt should ensure mechanism to recover tax from recipient

Case Name : Ambesh Shrivastav Vs ITO (ITAT Indore)

Case Number : I.T.A. No.582/Ind/2019

The brief facts leading to the case is this that the assessee along with 21 co-sellers sold immovable property lying and situated at Talawali Chanda to M/s. Sarthak Innovations Pvt. Ltd. The sale deed was registered under Section 2(14) of the Act on 21.10.2009 for a stated consideration of Rs.30 Lakhs in which the assessee's proportionate share comes to only Rs. 1,36,561/-. The case of the Revenue is this that the property is situated within a distance of 8 from the municipal limits of Indore. Therefore, it is a capital asset within the meaning of Section 2(14) of the Act and capital gain is chargeable on sale of such land. The deed was registered on 21.10.2009. Therefore, the capital gain has been found chargeable for the year under consideration. The market value of the property has been assessed by the Sub-Registrar at Rs.1,31,00,000/- as against the sale consideration of Rs.30,00,000/-. Since, the document was registered on 31.10.2009 as per guideline of the A.Y. 2010- 11, the assessment was finalized upon addition under Section 50C of the Act, which was further confirmed by the first appellate authority. This ground of appeal has been raised against the assessment of capital gain in accordance with the deeming provisions of section 50C of the Income Tax Act, 1961 considering the total consideration of impugned capital asset at Rs.1.31 Cores as assessed by the sub registrar. The AO has discussed the issue in details at para nos. 6 to 8 of the assessment order besides considering the same while disposing of the objections raised against reopening of the assessment which is also discussed in details at para no. 4 of the assessment order. The appellant, during the course of appeal proceedings has contended that the possession of the plot under consideration was handed over to the purchaser i.e. M/s Sarthak Innovation Pvt. Ltd. on 27.11.2007 which is relevant to A.Y.2008-09. In support of the same the appellant has relied on the draft sale deed which has been signed through the POA holder on behalf of the appellant.

It has further been contended that the entire sale consideration of Rs.1,36 ,561 /- has been received in the F.Y.2007-08 in pursuance of sale deed duly submitted to the sub-registrar office for the purpose of registration. Therefore, the appellant states that all the conditions required under the provision of section 2(47) of the Income Tax Act, 1961 have been fulfilled for making the transaction complete in the F.Y.2007-08. Plea of Appellant cannot be accepted that the transaction was complete in A.Y.2008-09. Similarly, the document under consideration i.e. draft sale deed presented in the office of sub-registrar can neither be treated as complete sale deed nor the agreement to sale on the strength of which it could have been said that consideration was received and possession was handed over to the purchaser of the property. Therefore, various case laws cited by the appellant have also not been found applicable on the peculiar set of facts under consideration.

Considering the above stated facts and the entirety of the circumstances and relevant documents, the AO has been found justified in assessing the capital gains in the A. Y. 2010-11 when the sale deed pertaining to the land belonging to as many as 22 persons was completed by way of proper registration. The same has been worked out by the AO at Rs.5,33,255/- on the basis of deemed sale consideration of Rs.5,96,315/- under section 50C of the Income Tax Act, 1961. The addition is therefore confirmed. Therefore, all the grounds of appeal were dismissed.