Tax Matters

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The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during May 2021:

Income tax rulings

➢ Deduction from eligible undertaking computed under section 80IA can be set off to the extent of gross total income, cannot be restricted to business income

- Reliance Energy Limited (Hon'ble Supreme Court ('SC') of India)

The Hon'ble SC has held that deduction from eligible undertaking computed under section 80IA of the Income-tax Act, 1961 ('the Act'), can be set off to the extent of gross total income and cannot be restricted to business income.

The brief facts of the case are as follows:

- Business income (including income from 'eligible business'): ~INR 3.55 billion;
- Income from Other Sources ('IFOS'): ~INR 0.42 billion;
- Gross Total Income ('GTI'): ~INR 3.97 billion.

The taxpayer claimed a deduction from eligible business under section 80IA of the Act of INR 5.46 billion restricting it to GTI of ~INR 3.97 billion.

The Hon'ble SC observed that Section 80AB of the Act pertains to the determination of the quantum of deductible income in the GTI and could not be read to be curtailing the width of section 80IA of the Act.

The interpretation of section 80IA of the Act was that the 'total income' of a Taxpayer is computed by taking into account the allowable deduction of the profits and gains derived from the 'eligible business'.

The Hon'ble SC relied on the co-ordinate bench decision of Synco Industries Ltd. V. AO (2008) (4 SCC 22) and Canara Workshops Pvt. Ltd (1986) 3 SCC 538 and held that the scope of sub-section (5) to Section 80IA of the Act was limited to determine the quantum of deduction under sub-section (1) of Section 80IA of the Act by treating 'eligible business' as the 'only source of income'. The provisions of section 80IA(5) of the Act could not be pressed into service for reading a limitation of deduction under section sub-section (1) to section 80IA of the Act only to business income.

JMP Insights: *The ruling has addressed the controversy relating to restricting deduction under section 80IA of the Act only to business income. It has held that deduction from eligible undertakings, computed under section 80IA of the Act, can be set off to the extent of gross total income and cannot be restricted to business income for arriving at the total income. Taxpayers with similar facts may want to evaluate the impact of this ruling on the specific facts of their cases.*

- **Miscellaneous Application ('MA') pending on 31 January 2020, in certain cases, could be considered as a disputed case and Taxpayer is eligible to file an application under Vivad se Vishwas Scheme**

  - Bharat Bhushan Jindal v. Principal Commissioner of Income Tax – 12 & ANR. [W.P.(C) 3921/2021]

The Designated Authority rejected the application filed by the Taxpayer under the Vivad se Vishwas Scheme ('VsV') on the basis that a MA pending before the ITAT cannot be considered as a disputed case. The Taxpayer, therefore, filed a writ petition before the Hon'ble Delhi High Court ('HC').

The ITAT had dismissed the Revenues appeal in Taxpayer's case for AY 2011-12 on 22 June 2018 due to the mistaken belief that the same issue was held in favour of the Taxpayer in AY 2008-09, AY 2009-10 and AY 2010-11. The Revenue had preferred an MA on 13 November 2018 and vide ITAT's order dated 11 May 2020, Revenues appeal was restored, fixing the next date of hearing to 6 July 2020.

As per the Frequently Asked Questions ('FAQs') issued vide Circular no. 21 dated 4 December 2020, it is clarified (refer FAQ 61) that if the MA pending on 31 January 2020 is in respect of an appeal dismissed 'in limine' before 31 January 2020, then such MA is eligible to be considered as a disputed case, implying thereby that an application can be made under VsV scheme.

The Delhi HC noted that on 22 June 2018 the ITAT had passed the order 'in limine' i.e. the order was passed based on a preliminary assessment of facts and was based on the decision given on the same issues that were in earlier years. There was no discussion on the merits of the case.

The HC further noted that in the light of the Doctrine of Relation back, the order accepting the MA needed to be construed as one breathing life into a dead appeal. If the Doctrine of Relation back were to be applied, then it could be said that the Revenue's appeal was pending on 31 January 2020. Accordingly, the Taxpayer was eligible to file an application under VsV scheme to settle the disputed case.

JMP Insights: *This ruling emphasises on the 'Doctrine of Relation back' which simply put means that an act done at a later time is treated as though it occurred at an earlier time. The FAQs issued by CBDT and rulings like these should save needless litigation and benefit Taxpayers and Revenue both.*

➢ Stay on income tax demand raised in accordance with the faceless assessment scheme

- Raja Builders v. National Faceless Assessment Centre & Ors. [Writ Petition (L) No. 11224 of 2021]

The Tax officer had issued a show-cause notice asking the Taxpayer as to why the assessment should not be completed in terms of the draft assessment order. The Taxpayer had filed an online response to the notice requesting Tax officer to grant an opportunity of being heard. However, there was no reply from the Revenue's side. The next day the Taxpayer submitted a written response with documentary evidence. However, the Tax officer passed the assessment order on the same day, presumably without considering the Taxpayer's response.

The Bombay HC has stayed the operation of the assessment order, notice of demand, penalty proceedings, etc. until the writ petition is disposed of.

JMP Insights: *On similar facts the Delhi HC in case of KBB Nuts Private Limited v. National Faceless Assessment Centre Delhi & Anr. [W.P.(C) 5234/2021, CM Nos. 16065-67/2021] had set aside the assessment order and directed a personal hearing to be granted to the Taxpayer. There have been several such writs filed by different Taxpayers on similar facts. The important principle enshrined in these decisions is that the Taxpayer should be given sufficient time to respond to the show cause notice issued against the draft assessment orders. If the Taxpayer files a response, then no order should be passed before considering the response filed. Further, an opportunity of being heard/personal hearing and the principle of natural justice should be adhered to before framing/passing assessment orders.*

We would further like to highlight that section 144B (9) of the Act on Faceless Assessment provides that an assessment order passed from 1 April 2021 shall be non-est, *if such assessment is not made in accordance with the procedure laid down for it. As such, wherever proper procedure is not followed, the Taxpayer may consider filing an appeal before the CIT(A) to get the assessment treated as* non-est*. Under certain facts, this may be a better approach than preferring a Writ.*

➢ Foreign exchange gains on personal loan, not a taxable receipt

- Aditya Balkrishna Shroff (Mumbai ITAT) (ITA No. 4472/Mum/2019)

The Taxpayer had extended a personal interest-free loan of USD 2,00,000 to his cousin in Singapore under the Liberalized Remittance Scheme ('LRS') of the Reserve Bank of India. Two years later, when the loan was repaid, the Taxpayer received back a higher amount in Indian Rupees from his cousin due to the increase in the exchange rate. The Tax officer sought to bring the surplus to tax as interest or income from other sources.

ITAT observed that the said loan was given on capital account and was not given in the course of business of the Taxpayer and the accretion of money, in rupee terms, was on account of an increase in the value of the US Dollars.

Reference was made to the Calcutta ITAT decision in the case of *Shaw Wallace & Co Ltd*., wherein it was held that a capital receipt, in principle, is outside the scope of 'income' chargeable to tax, and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within the ambit of 'income' by way of specific provisions of the Act.

ITAT also referred to section 2(24) of the Act which states that only the gains arising as per section 45 of the Act will be treated as income. Accordingly, any other gain is outside the purview of 'income' under section 2(24) of the Act. ITAT further observed that all 'gains' are not covered by the scope of 'income'. The amount could not be considered as 'interest' as per section 2(28A) unless the borrower pays an amount in respect of *moneys borrowed or debts incurred.*

ITAT explains that a benefit or gain arising from the transaction was not on account of interest payment but on account of forex fluctuation which is of capital field, thus, a capital receipt.

The ITAT commented that whether the transaction was permissible under the Foreign Exchange Management Act, 1999 ('FEMA') or not, is not within their purview to examine. What was important was that even if impermissible, the transaction had taken place and the Act does not make any distinction in taxing a permissible vis-à-vis an impermissible transaction.

JMP Insights: *The ruling lays down a principle distinguishing between capital and revenue receipts like in many other judgments and that before deciding the head under which a receipt is to be taxed it is first to be decided whether it is in the nature of income or not.*

Extension of Due dates in case of filing of return in a table format:

Sr. No	Nature of Compliance	Original Due Dates	New Due Dates
1	Income Tax Returns for FY 2020-21 – **(Non-audit cases except companies)**	31.07.2021	30.09.2021
2	Income Tax Returns for FY 2020-21 - Corporate Taxpayer or Firm whose accounts are required to be audited; or Partner of Firm whose accounts are required to be audited; or any Taxpayer other than Corporate and Firm whose accounts are required to be audited – **(Audit cases and companies)**	31.10.2021	30.11.2021

3	Taxpayer required to furnish return u/s 92E in respect of international Transactions **(Transfer Pricing cases)**	30.11.2021	31.12.2021
4	Filing of Audit Reports for FY 2020-21 **(Tax Audit Report)**	30.09.2021	31.10.2021
5	Due date of Furnishing Report from Accountant in respect of International Transactions covered u/s 92E **(Transfer Pricing Report)**	31.10.2021	30.11.2021
6	**Belated** and **Revised** Income Tax Returns for FY 20-21	31.12.2021	31.01.2022
7	Statement of Financial Transactions **(SFT)** for FY 2020-21	31.05.2021	30.06.2021
8	Statement of Reportable Account for calendar year 2020	31.05.2021	30.06.2021
9	Statement of Tax Deduction at Source **(TDS Return)** for the quarter ending 31 March 2021	31.05.2021	30.06.2021
10	Issuance of TDS certificates in Form 16 required to be furnished by employer for the FY 2020- 21	15.06.2021	15.07.2021
11	TDS/TCS Book adjustment statement in Form 24G for the month of May 2021	15.06.2021	30.06.2021
12	Statement of Deduction of Tax (under Rule 33 of the Income-tax Rules, 1962) in the case of superannuation fund for FY 2020-21	31.05.2021	30.06.2021
13	Statement of Income paid or credited by an investment fund to its unit holder in Form 64D for FY 2020-21	15.06.2021	30.06.2021
14	Statement of Income paid or credited by an investment fund to its unit holder in Form 64C for FY 2020-21	30.06.2021	15.07.2021

DID YOU KNOW?

The amendment to Section 2(42C) and Section 50B by the Finance Act, 2021 has brought slump exchange within the ambit of taxation. Accordingly, the Fair Market Value (FMV) of the capital assets on the date of transfer is to be considered as the full value of consideration received or accruing as a result of such exchange. On 24 May 2021, the Central Board of Direct Taxes has notified new Rule 11UAE for computation of the FMV.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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