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Small Savings Schemes – Public Provident Fund Scheme, 1968 (PPF, 1968) and Senior Citizens savings scheme, 2004 (SCSS, 2004) – Revision of Interest Rates

The Government of India have vide their Office Memorandum (OM) No. 6-1/2011-NS.II (Pt.), dated March 26, 2012, advised the rate of interest on various small savings schemes for the financial year 2012-13. Accordingly, the rates of interest on PPF, 1968 and SCSS, 2004 for the financial year 2012-13 effective from April 1, 2012, on the basis of the interest compounding/payment built-in in the schemes, will be as under:

Scheme	Rate of interest w.e.f. 01.12.2011	Rate of interest w.e.f. 01.04.2012
5 year SCSS, 2004	9.0% p.a	9.3% p.a
PPF, 1968	8.6% p.a	8.8% p.a

Income-tax (Fifth Amendment) Rules, 2012 - Insertion of rule 2F

In the Income-tax Rules, 1962, after rule 2E, rule 2F has been inserted to provide guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under clause (47) of section 10.

- The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India.
- The funds of Infrastructure Debt Fund shall be invested only in the Public Private Partnership Infrastructure Projects and Post - Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operation and such Infrastructure Debt Fund is a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment.
- The Infrastructure Debt Fund shall issue rupee denominated bonds or foreign currency bonds in accordance with the directions of Reserve Bank of India (RBI) and the relevant regulations under the Foreign

Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, as amended from time to time.

- The terms and conditions of any bond issued by the Infrastructure Debt Fund shall be in accordance with the said directions of the Reserve Bank of India.
- In case of an investor in the aforesaid bond being a non-resident the original or initial maturity of bond, at the time of first investment by such non-resident investor, shall not be less than a period of five years.

Provided that the investment made by a non-resident investor in such bonds shall be subject to a lock-in period of not less than three years, but the non-resident investor may transfer the bond to another non-resident investor within such lock-in period.

- The investment made by the Infrastructure Debt Fund in an individual project or project belonging to a group at any time, shall not exceed twenty per cent, of the corpus of the fund.
- No investment shall be made by the Infrastructure Debt Fund in any project where its sponsor or the associate enterprise or the group of such sponsor has a substantial interest.
- The Infrastructure Debt Fund shall file its return of income as required by sub-section (4C) of section 139 on or before the due date.
- In case the Infrastructure Debt Fund does not fulfill any of the conditions provided in this rule or directions of the Reserve Bank of India, all provisions of the Act shall apply as if it is not an Infrastructure Debt Fund referred to in clause (47) of section 10 of the Act.

Case laws

CIT vs. Vinay Mittal (Delhi High Court)

TESTS TO DETERMINE WHERE SHARES GAIN IS CAPITAL GAINS OR BUSINESS PROFITS

In the case of CIT vs. Vinay Mittal, A.O. considered Long Term Capital Gains (LTCG) and Short Term Capital Gains (STCG) on sale of shares as business profits, of which CIT(A) upheld STCG as business profits. However, ITAT Delhi deleted the taxability of STCG as business profits. On appeal by the Department, the Delhi High Court held that STCG was not business profit on following observations::

- The assessee was a salaried employee, and maintained two separate portfolios for investment and trading,

- The shares were held for periods ranging from 2.4 months to 11 months,
- Though the quantum or total number shares were substantial, there were only seven transactions entered into and the period of holding was not insignificant and small. While the quantum or total number may not be determinative but in a given case keeping in view period of holding may indicate intention to make investment,
- Substantial dividend income had been received,
- The element of uncertainty and risk is always there in securities and this factor cannot be a determinative factor to decide whether the assessee is trading in shares or is an investor. Some investors do take risk,
- The ratio of sales and purchase will always be in favour of sales when the shares are sold, and
- In the earlier assessment years, transactions in the investment portfolio were accepted by the AO.

ITO v. Rachana Constructions (Pune ITAT):

DEPARTMENT'S APPEAL DISMISSED OWING TO 'APATHY' IN SERVING NOTICE OF HEARING

In the case of ITO v. Rachana Constructions, notice of hearing of the Department's appeal could not be served on the assessee through post at the address given in Form 36. The DR was accordingly directed to directly effect service of the notice of hearing on the assessee. On the date of hearing, the DR was unable to say whether service was effected or not. Pune ITAT dismissed Department's appeal on the ground that the department has shown total apathy in the matter of service of notices of hearing. It was observes as under:

- The opportunity of hearing to the other side is essential before adjudicating appeal for which service of notice is a condition precedent;
- The notices of hearing which cannot be served on the assessee in revenue's appeals are served through Income-tax authorities in order to ensure expediency and equity, it is fully in conformity with the judicial powers and jurisdiction of the Tribunal and does not run contrary to any provisions of the Statute and the department is well equipped with the requisite staff strength required for this purpose;
- The revenue showed apathy with regard to serving the notices of hearing on the assessee and has also not made any request to get the

notice served by alternate way i.e., by way of publication etc as laid down in rule 20 of CPC.

A.G. Holdings Pvt. Ltd vs. ITO (Delhi High Court)

SECTION 147 : REOPENING REASONS NEED NOT BE SUPPLIED WITHIN LIMITATION PERIOD

In the case of A.G. Holdings Pvt. Ltd vs. ITO, A.O. issued notice u/s. 148, however, reasons of reopening were supplied to the assessee after 6 years, i.e. after expiry of period of limitation to serve notice as per Section 149. Hence, the reopening was challenged by the assessee. The Delhi High Court held as under:

- There is no requirement in s. 147, 148 or 149 that the reasons recorded should also accompany the notice issued u/s 148. The requirement in s. 149(1) is only that the notice u/s 148 shall be issued;
- Section 149(1) only requires the issue of notice u/s 148. It is also not specified in the section that the notice should be served on the assessee before the period of limitation;
- The only mandatory requirement is that the AO must record his reasons for reopening the assessment before issuing the notice and he is duty bound to supply the recorded reasons to the assessee after the assessee files the return in response to the s. 148 notice;

CIT vs. P. D. Abrahm (Kerala High Court)

UNACCOUNTED EXPENDITURE TO BE SET-OFF AGAINST UNACCOUNTED INCOME DESPITE EXPL. TO SECTION 37(1) & PROVISO TO SECTION 69C

In the case of CIT vs. P. D. Abrahm, pursuant to a search u/s 132, an assessments u/s 158BC was made and various additions were made. One of the issues was whether if the AO makes an addition of unaccounted income on the basis of seized records, he is required to give a deduction for the unexplained expenditure shown in the same records for which the Kerala High Court ruled as under:

- When the Department relies on the seized records for estimating undisclosed income, there is no reason why the expenditure stated therein should be disbelieved merely because there is no written

agreement and that payments were not made through cheques or demand drafts;
- The statute authorizes assessment of "undisclosed income" which has to be arrived at after allowing expenditure incurred by the assessee whether it be accounted in the regular books or not;
- The Explanation to s. 37(1) does not apply because the unaccounted business is not an "illegal business" and the proviso inserted to section 69C by the Finance (No.2) Act, 1998 w.e.f. 1.04.1999 does not cover excess expenditure over accounted expenditure in business.

CIT vs. Black & Veatch Consulting Pvt. Ltd (Bombay High Court)

SECTION 10A/ 10B DEDUCTION ALLOWABLE WITHOUT SET OFF OF LOSSES OF NON-ELIGIBLE UNITS

In case of CIT vs. Black & Veatch Consulting Pvt. Ltd, the Bombay High Court dismissed the appeal of the Department against the decision of the Tribunal that section. 10A deduction had to be allowed before set-off of the brought forward unabsorbed depreciation and losses of the unit non-eligible for section 10A. It observed as under:

- S. 10A is a deduction provision and not an exemption provision. It has to be given effect to at the stage of computing the profits and gains of business and before the application of the provisions of s. 72 for carry forward and set off of business losses.
- A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. S. 80A(1) stipulates the deductions specified in s. 80C to 80U shall be allowed from the gross total income at the time of computation of income. S. 80B(5) defines "gross total income" as the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter.
- It is not permissible to telescope the provisions of Chapter VI-A in the context of the deduction u/s 10A unless a specific statutory provision to that effect is made

M/s. Alpha Projects Society P. Ltd vs. DCIT (ITAT)

SECTION 40(A)(IA): SPECIAL BENCH VERDICT CANNOT BE FOLLOWED IN VIEW OF HIGH COURT VERDICT

In the case of M/s. Alpha Projects Society P. Ltd vs. DCIT, in AY 2005-06, the assessee made payments to contractors & for professionals & technical services and deducted TDS which was paid after the end of the Financial Year but before filing the ROI. The assessee pleaded that s. 40(a)(ia), as amended by the

Finance Act, 2010 w.e.f. 1.4.2010 to provide that no disallowance should be made if the TDS was paid before the due date of filing the ROI should be held to be retrospective, which was rejected by the AO & CIT (A). ITAT Ahmedabad allowed the assessee's appeal and observed as under:

- The amendment made by the Finance Act, 2010 w.e.f. 1.4.2010 that no disallowance should be made if the TDS was paid before the due date of filing the Return of Income is retrospective in nature in view of the issue being decided by the Calcutta High Court in CIT vs. Virgin Creators;
- The AO and CIT (A) had rejected this claim of the assessee by relying on Bharati Shipyard Ltd 132 ITD 53 (Mum) (SB) which had taken a view that the amendment is prospective in nature;
- The Special Bench verdict cannot be followed in view of High Court verdict and accordingly, allowed the appeal of the assessee.

CIT vs. M/s. The Asian Marketing (Rajasthan High Court)

SECTION 40(B)(V): PARTNERSHIP DEED NEED NOT QUANTIFY PARTNER'S REMUNERATION

In the case of CIT vs. M/s. The Asian Marketing, the assessee's partnership deed provided that the partners would be paid remuneration / salary "according to the standards and norms fixed by the relevant provisions of the Income Tax Act, 1961". The AO disallowed the claim for deduction of the salary paid to the partners u/s 40(b)(v) on the ground that as the deed did not quantify the amount of remuneration. This was reversed by the CIT (A) and Tribunal. On appeal by the department, the Rajasthan High Court dismissed the appeal and observed as under:

The remuneration to partners should be authorized and the amount of remuneration shall not exceed the amount specified in s. 40(b)(v). Hence, s. 40(b)(v) uses the word 'authorized' and not the word 'quantify'. The assessee's partnership deed provided that the partners would be paid remuneration / salary "according to the standards and norms fixed by the relevant provisions of the Income Tax Act, 1961". The quantification of the remuneration was apparent from the above clause of the partnership deed.

CIT vs. Punjab Breweries Ltd (Punjab and Haryana High Court)

TRIBUNAL'S ORDER NOT DEALING WITH FINDING OF "SHAM" TRANSACTION IS "PERVERSE"

In the case of CIT vs. Punjab Breweries Ltd., the AO disallowed payments made by the assessee towards "C&F handling charges" on the ground that the transactions were a "sham" and intended to provide interest-free funds. This

was confirmed by the CIT (A) though the Tribunal allowed the claim on the ground that a similar issue had been allowed in the earlier years. On appeal by the department, the Punjab and Haryana High Court reversed the decision of Tribunal and observed:

- It is not in public interest to accept a claim of allowing C&F handling charges when there is no evidence of rendering any service by the company to the assessee;
- The sole object of diverting funds was to facilitate passing of funds as interest free loan and hence, the transactions were a "sham";
- The Tribunal committed grave error by recording the order as if it is a consent order though the DR had categorically defended the AO & CIT (A)'s order;
- The earlier orders of the Tribunal have also been challenged before the High Court. Therefore, the findings of the Tribunal are wholly erroneous, cryptic, perverse, laconic and perfunctory.

ITO vs. Yasin Moosa Godil (ITAT Ahmedabad)

SECTION 50C IS A DEEMING PROVISION WHICH DOES NOT APPLY TO "RIGHTS IN LAND & BUILDING"

In the case of ITO vs. Yasin Moosa Godil, the assessee had booked a flat and paid Rs. 16.12 lakhs in a building which was under construction for which possession had not been handed over to the assessee nor had a registered sale deed been executed in favour of the assessee. Subsequently, the assessee transferred his rights, title and interest in the said flat and received back Rs. 16.12 lakhs. The AO took the view that the stamp duty value of the flat was Rs. 57.57 lakhs, capital gains had to be computed on that basis u/s 50C which was reversed by the CIT (A).

On appeal by the Department, The ITAT Ahmedabad held as under:

- Section 50C is a deeming provision and extends to only to land or building or both.A deeming provision can be applied only in respect of the situation specifically given and cannot go beyond the explicit mandate of the section;
- If the capital asset under transfer cannot be described as "land or building or both, section 50C will cease to apply;
- As the assessee had transferred booking rights and received back the booking advance, the booking advance cannot be equated with the capital asset and therefore s. 50C cannot be invoked.

Steel Authority of India Ltd v CIT (Delhi High Court)

THOUGH EXPLANATION 10 TO S. 43(1) DOES NOT APPLY TO LOAN WAIVER, TREATMENT IN BOOKS OF REDUCING AMOUNT WAIVED FROM ASSET COST MEANS THAT WDV HAS TO BE REDUCED

In the case of Steel Authority of India Ltd v CIT, the assessee had received a loan from the Steel Development Fund in earlier years of which a substantial part was waived in AY 2000-01. The assessee reduced the cost of the assets by the amount of loan waived and claimed depreciation on the reduced figure in his books of accounts. However, the assessee claimed that the waiver did not impact the WDV of the assets for income tax purpose and that depreciation should be allowed on the original figure. The claim was disallowed by lower authorities and on further appeal to the Delhi High Court, it held as under:

- The Explanation 10 to section. 43(1) does not cover the case of waiver of the loan and it covered only the grant of a subsidy or reimbursement by whatever name called;
- Though the assessee's case may not fall under Explanation 10, the waiver of the loan amounted to the meeting of a portion of the cost of the assets under the main provision of s. 43(1) on the basis of the treatment given by the assessee in its books of accounts;
- The real nature of a transaction can be understood by reference to the contemporaneous act of the parties, which throws considerable light on their true intention and their understanding of the transaction;
- The assessee understood the receipt of the loans as having been given towards meeting a part of the cost of the assets and the waiver cannot have a different effect on such intention;
- PJ Chemicals Ltd 210 ITR 830 (SC) which holds that a subsidy given as an incentive for industrial growth cannot be reduced from the cost of the assets under s. 43(1), does not apply to the facts.

SERVICE TAX

Circulars

Payment of Service Tax on Receipt basis

From 1st April 2012 the payment of service tax shall be allowed to be deferred till the receipt of payment upto a value of Rs 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of service, whose turnover of taxable services is fifty lakhs rupees or less in the previous financial year.

However, in respect of the invoices issued on or before 31st March 2012 where the payment has not been received before 1st April 2012, the point of taxation shall be the date of payment.

Clarification on the head of services provided by APMC /Board

It is clarified that the services provided and charged by the Agricultural Produce Marketing Committee (APMC)/Board (APMC) as market fees to the licensees or farmers or any other persons are classifiable as Business Auxiliary Services and not Business Support Service as a result APMC/Board would still be covered by the exemption under Notification 14/2004-ST.

However, any other service provided by the APMCs for a separate charge(other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads

SALES TAX

Circulars & Notification

Carry Forward of the Excess credit

It has been decided that on administrative grounds to allow carry forward of the refund claim upto Rs. One Lakh for the return period ending March 2012 to the first return of the next year 2012-13.

In case, any dealer who has already filed the claim of refund for the period /periods of 2011-12 in form-501 and desires to withdraw such claim so as to carry forward his refund then such dealer shall file a Revised return showing carry forward of such refund withdrawing the application of refund already given.

Submission of annexures by the dealers who are not required to file Audit Report in Form 704.

Circular 7T of 2012 has been issued which clarifies the Annexure to be filled and uploaded by various types of dealers whether covered under composition scheme or not and who are not required to file the Audit Report in Form 704 along with the sales tax returns. The circular also specifies the due date by which the said annexures are to be uploaded.

Tds on Unregistered dealer

The rate of TDs to be deducted on unregistered Dealer has been increased from 4 percent to 5 percent w.e.f 01/04/2012

Notification for ECS of Refund and Mandate form to be submitted by Dealer

W.e.f 01/05/2012 declaration in Annexure A has been notified for Registered dealers or Diplomatic Authority or International Body or Organisation who are eligible for refund. The refund amount shall be directly credited in the bank account.

Introduction of Purchase Tax

New Sections 6A and 6B has been introduced and for the first time in Maharashtra Value Added Tax Act, 2002 a tax would be levied on the

Purchases of Cotton and Oilseeds as per the rate of sales tax prescribed in Schedule "C" if:-

- the purchases so made are dispatched outside the state to any place in India not by reason for sale to his own place of business or of his agent or
- if the goods are used in manufacturing of
    - tax free goods or
    - taxable goods, and the goods so manufactured are dispatched outside the state to any place in India not by reason for sale to his own place of business or of his agent

Retention of Tax Invoices:

An retrospective amendment w.e.f. 01/04/2005 has been made to increase the time limit for preservation of Tax Invoice from Three Years to Eight years

REGULATIONS GOVERNING INVESTMENTS

RBI

Important Recent Developments in Inbound Investments Policies

FDI AND FII RELATED DEVELOPMENTS

Civil aviation sector authorised under approval route to raise External Commercial Borrowings (ECBS) for working capital as end use:

Companies in civil aviation sector are now permitted to raise ECB for working capital as permissible end use for civil aviation sector under approval route and also to refinance the outstanding working capital rupee loan availed from the domestic banking system, subject to following conditions:

- Airline Company should be registered under Companies Act, 1956 and also should possess permit license from Directorate General of Civil Aviation (DGCA) for passenger transportation.
- ECB should be raised within 12 months from the date of issue of this circular (24th April, 2012) and minimum average maturity period of three years.
- Overall ceiling for the entire civil aviation sector would be USD 1 Billion and the maximum permissible ECB that can be availed by an individual Airline company will be USD 300 Million. The ECBs availed shall not be allowed to be rolled over.
- ECB will be allowed to Airline Company based on cash flow, foreign exchange earnings and its capability to service the debt.
- The application for such ECB should be accompanied by a certificate from a Chartered Accountant confirming the requirement of the working capital loan and the projected foreign exchange cash flow / earnings which would be used for servicing the loan. It should be ensured that liability is extinguished only out of foreign exchange earnings of the borrowing company and not accessed from Indian market.

Enhancement of refinancing limit for power sector

Indian companies in the power sector would be allowed to utilise 40% of the fresh ECB raised, towards refinancing of the Rupee Loan/s availed by them from the domestic banking system, under the approval route, provided that at least 60% of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure projects.

Refinancing / Rescheduling of External Commercial Borrowings (ECBS) under the approval route

It is now permitted for borrowers desirous of refinancing existing ECB, to raise fresh ECB at a higher all in cost/ reschedule an existing ECB at a higher all in cost under the approval route subject to the condition that the enhanced all in cost does not exceed the all in cost ceiling prescribed as per the extant guidelines.

External Commercial Borrowings (ECBS) for maintenance and operation of Toll Systems for roads and highways under automatic route

ECB would be allowed for capital expenditure under automatic route for the purpose of maintenance and operation of Toll systems for roads and Highways provided they form the part of original project. Existing ECB and reporting requirements would remain unchanged.

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