

NEWSLETTER

AUGUST 2015

DAMANIA & VARAIYA

Chartered Accountants



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Income Tax

Audit



INCOME TAX

Cost Inflation Index declared:

The Cost Inflation Index for the Financial Year 2015 – 16 is declared and it is:
1081

MSEB Employees Credit Society – Pune Tribunal

Facts: The credit society filed its Return of Income without claiming deduction under Section 80P which it was otherwise eligible for. The Return was processed u/s. 143(1). The society filed a rectification application u/s. 154 to allow the deduction. The Assessing Officer rejected the application and denied the

claim.

The CIT(A) allowed the claim and on appeal by the department, Pune Tribunal held that:

Correct income has to be assessed according to the provisions of the Income Tax Act, 1961. If the assessee has declared higher income because of some mistaken belief, misconception or lake

of proper guidance, the assessing officer is obliged to assist the assessee to establish the correct taxable income and determine legitimate tax demand. If a particular levy is permissible by law, the tax cannot be collected. The credit society is eligible for deduction u/s. 80P on merit and hence the same must be allowed.

Primus Investment & Finance Ltd. – Mumbai Tribunal

Facts: The Company was engaged in the business of Leasing, Financing and trading. Its application for

registration as NBFC with the RBI was rejected since the Company was not meeting the minimum Net Owned

funds criteria. According to the Assessing Officer, the Company was not authorised to carry on the business of

INCOME TAX *(cont.)*

financing and therefore the activities of the Company were prohibited under the law. He therefore concluded that the interest income earned by the Company was not business income but income from other sources. He also disallowed all the expenditures considering that they were not incurred for the purpose of "business". The CIT(A) upheld the order of the AO.

On appeal by the Company, Mumbai Tribunal held that:

The decision of RBI whether to give permission or deny the application of NBFC by the Company does not decide the issue of carrying on of business or make it illegal business. If the Company has violated the regulations of RBI, it would be penalized by them. However that does not mean that the systematic organized activities carried out by the Company for earning profit would not be treated as business activity. Accordingly, the interest income earned by the Company has to be taxed under the head business income and all the expenses related with it have to be allowed as business expenditures.

P.M.S.Diesel – Punjab & Haryana High Court

The court has dealt with the scope of Section 40(a)(ia) as far as disallowability of expenditure is concerned. The court held that:

The argument that section 40(a)(ia) applies only to the amounts which are "payable" at the year end and not to the amounts that are already "paid" during the year is not acceptable. The purpose of this section is to ensure the recovery of tax. There is no indication in the section that this object was confined to recovery of tax only on the amounts payable and not on the amounts already paid during the year. Therefore, the scope of the section is wide enough to cover the amounts payable as well as the amounts paid during the financial year.

Outotec GMBH – Kolkata Tribunal

Facts: The tax payer was a German Company which supplied equipments to several Indian Companies. The equipments supplied were part of overall plant to be installed by customers. These equipments were sold and the title of ownership was transferred outside India. The Indian Companies would pay a part of the purchase price only up on fulfillment of performance guarantee or successful completion of acceptance test in India. Further, in relation to certain projects undertaken in India, the German Company constituted supervisory Permanent Establishment (PE) which was unrelated to this contract of supply of equipments.

The Assessing Officer concluded that since the portion of purchase price was payable only up on successful completion of acceptance test in India, the same was taxable in India.

INCOME TAX *(cont.)*

The Kolkata Tribunal held that:

Since all the activities relating to designing, fabrication and manufacturing was done outside India and since the sale of equipment took place outside India and since ownership of equipment was transferred outside India, such offshore transaction was not taxable in India.

The performance guarantee or acceptance tests carried out in India are part of normal commercial arrangements and cannot be equated with transfer of goods in India. The balance payment to be made after the acceptance test in India is only a payment mechanism and deferment of payment on fulfilling certain criteria and has nothing to do with completion of sale of equipment.

Further, since there was no connection between the supervisory PE of the German Company in India and offshore supply of equipment, the consideration for offshore supply cannot be regarded as attributable to the supervisory PE in India and therefore there is no question of Indian Income Tax to tax offshore supply of equipment by the reason of having a PE in India.

Compiled by: CA Malay Damania, Partner



AUDIT

Applicability of Cash flow Statements as per Companies Act 2013:

As section 2(40) of the Companies Act 2013, Financial Statement in relation to a company, includes –

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable and;
- (v) any explanatory note annexed to, or forming part of.

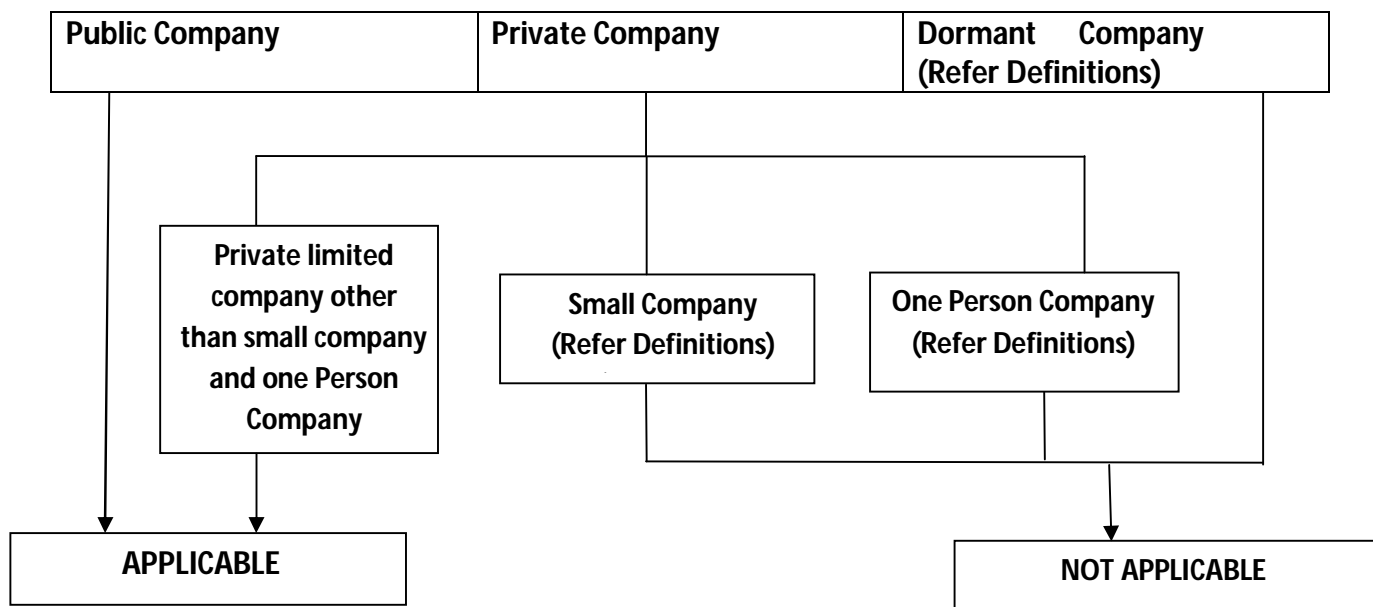
Position before the Introduction of Companies Act 2013 i.e. till 31st March 2014

Cash Flow Statement was applicable to level I entity as per companies (accounting standards) Rule 2006. Now having the Cash Flow Statement is included in the definition of financial statements as per the

Companies Act 2013, the act will override the accounting standards and so the Cash Flow Statement is applicable to all Private limited companies. As per section 2(40) of Companies Act 2013, there is an exemption given

to One Person Company, Small Company and Dormant Company for preparing the cash flow statement for the purpose of inclusion in the financial statements.

Overview of Applicability of Cash Flow Statements as per Companies Act 2013:-



Definitions:

Small Company (Sec2(85) of companies act 2013):

“small company” means a company, whose paid up capital does not exceed 50 Lakh or such higher amount as may be prescribed (which shall not be higher than 5 Crore) **and** whose turnover as per its profit and loss does not exceed 2 crores or such amount as may be prescribed (which shall not be more than 20 crore)

Dormant Company (sec 455 of companies’ act 2013):

Dormant Company” means a company which is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

One person Company (section 2(62) of companies act 2013):

One Person Company” means a company which has only one person as a member.

AUDIT *(cont.)*

Level I Entity as per companies (accounting standards) Rules, 2006:

- i. Enterprises whose equity or debt securities are listed whether in India or outside India.
- ii. Enterprises which are in the process of listing their equity or debt securities as evidenced by the board of directors' resolution in this regard.
- iii. Banks including co-operative banks.
- iv. Financial institutions.
- v. Enterprises carrying on insurance business.
- vi. All commercial, industrial and business reporting enterprises, whose turnover for the immediately preceding accounting period on the basis of audited financial statements exceeds Rs. 50 crore. Turnover does not include 'other income'.
- vii. All commercial, industrial and business reporting enterprises having borrowings, including public deposits, in excess of Rs. 10 crore at any time during the accounting period.
- viii. Holding and subsidiary enterprises of any one of the above at any time during the accounting period.

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