

NEWSLETTER

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DAMANIA & VARAIYA

Chartered Accountants



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INCOME TAX

Re: R K P Company – Raipur Tribunal

Sub: Contrary decisions by non-jurisdictional High Courts.

The Tribunal was faced with the issue of whether the second proviso to section 40(a)(ia) is applicable from 1.4.2013 ie. the date of its introduction in the IT Act OR is declaratory and curative in nature and it has retrospective effect from 1.4.2005 ie. the date from which the proviso was inserted by the Finance Act. This is in view of the conflict of opinion between the Delhi High Court in CIT Vs Ansal Landmark Townships Pvt Ltd and the Kerala High Court in Thomas George Muthoot Vs CIT.

The Tribunal observed that:

It will be wholly inappropriate for us to choose views of one of the High Courts based on our perceptions about reasonableness of the respective view points, as such an exercise will amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our highest respect of both the Hon'ble High Courts, adopt an objective criterion for deciding as to which of the Hon'ble High Court should be followed by us. We find guidance from the judgment of Hon'ble Supreme Court in the matter of CIT vs. Vegetable Products Ltd. Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of **taxing provisions** are possible, that construction which **favours the assessee** must be adopted". This principle has been consistently followed by the various authorities as also by the Hon'ble Supreme Court itself

INCOME TAX *(cont.)*

As regards lack of guidance from Hon'ble jurisdictional High Court, that cannot be reason enough to disregard the decisions from non-jurisdictional High Courts. Hon'ble Courts above, being a higher tier of the judicial hierarchy, bind the lower forums not only in the jurisdiction of respective High Courts, but unless, there is anything contrary thereto by the jurisdictional High Courts, other jurisdictions as well. There cannot be any dispute on the fundamental proposition that in the hierarchical judicial system that we have, better wisdom of the Court below has to yield to higher wisdom of the Court above.

Hence when there are conflicting judgments of non-jurisdiction High Courts, the Tribunal is not permitted to choose based on its perception of what the correct law is because it will amount to sitting in judgement over the High Courts' views. Instead, it has to follow the view which is in favour of the assessee even if it believes that this view is not the correct law.

Compiled by: Malay Damania, Partner

Re: Ikea Trading India – Delhi Tribunal

Sub: Section 30/37 – Expenditure on Repairs of rented premises, even if hugh and accumulated, are allowed as Revenue expenditure.

In the present case, the issue is related to expenditure on building which is not owned by the assessee but is a rented premises. The expenditure would be dealt with by the provision of section 30. On reading of the above section, the accumulated repairs are not allowed when the assessee owns building and therefore **as a tenant** cost of repairs to the premises is allowable whether they are accumulated or current.

Compiled by: Malay Damania, Partner

INCOME TAX *(cont.)*

Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 has been introduced as Chapter IX of the Finance Act, 2016, and provides a one time opportunity to taxpayers to come clean by declaring their undisclosed income or assets in India. The Central Board of Direct Taxes (CBDT) has issued sets of FAQs on this scheme.

Period covered - It is open for four months, from **1st June to 30 September 2016**.

Tax Charge - **Tax @ 30% of undisclosed income & Surcharge (KKC) @ 25% of such Tax**

Penalty Charge - **@ 25% of such tax (Total – 45% of income) till 30th November 2016**.

Voidance – The declaration will be considered void in the case of made by misrepresentation or suppression of facts and non adherence of payment under the scheme. In this circumstance, the undisclosed income shall be chargeable to tax under the I.T Act in the previous year in which such declaration is made.

The Scheme shall not apply to the below persons:

- (a) Who has been ordered for detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):
- (b) Who has been prosecuted under Chapter IX or Chapter XVII of the I.P.C, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988;
- (c) to any person notified u/s.3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;
- (d) Persons covered by the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

INCOME TAX *(cont.)*

- (e) For and till the assessment year 2016-17, the person —
- (i) Has been issued notice u/s. 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the I. T Act in respect of such assessment year and the proceeding is pending before the Assessing Officer; or
 - (ii) has been conducted search u/s. 132 or requisition has been made u/s. 132A or a survey has been carried out u/s. 133A of the I. T Act in a previous year and a notice under sub-section (2) of section 143 for the assessment year relevant to such previous year or a notice u/s. 153A or u/s. 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired; or
 - (iii) Where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the I. T Act in respect of such undisclosed asset.
 - (iv) Undisclosed income Earned through corruption.

Declaration of income

- Declaration of income or income in the form of investment in any asset shall be made in **Form-1** till 30th September 16, keeping valuation reports of all the assets declared.
- Pr. CIT or CIT shall issue an acknowledgement in **Form – 2** within 15 days from the end of the month of declaration made
- **Form – 3** with proof of tax payment shall be submitted by declarant to Pr. CIT or CIT.
- The Pr. CIT or CIT shall grant certificate in **Form-4** to the declarant within fifteen days of the submission of Form 3.

INCOME TAX *(cont.)*

Tax Payment Schedule under the Scheme:

- (i) Minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016;
- (ii) Further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017;
- (iii) Balance amount to be paid on or before 30.9.2017.

Tax is required to be paid on the declared value of the assets and determination of value of such assets shall be done on Fair market value that will be at the higher of cost and sellable value in the open market as on 1st June 2016 of such asset as per valuation report other than shares and securities and interest in firm or in AOP those have separate method of valuation.

Assets covered:

- (i) Bullion, jewellery or precious stone shall be at the higher of
- (ii) Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work)
- (iii) Shares whether quoted or not and securities
- (iv) interest in firm or in AOP
- (v) Any other undisclosed assets not covered above like immovable properties etc.

Benefits of the scheme:

- Incorporation of undisclosed assets in the books to use such assets officially.
- Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.
- Relaxation from explanation of sources of income on disclosure of undisclosed assets in the current year.

INCOME TAX *(cont.)*

- Immunity benefits of Income Tax Act, Wealth Tax Act and the Benami Transactions (Prohibition) Act, 1988.
- The Income-tax Department is in receipt of large volume of information from various sources such as registrars of property, banks, financial institutions, stock exchanges, tax deductors etc. The Department has launched a comprehensive data-mining and compliance management programme in the form of 'Project Insight' which will generate a large volume of reliable information about financial transactions undertaken by taxpayers and the relevant year in which the transaction was undertaken.

Important Points of the scheme

- Undisclosed income declared will not be included in total income.
- Undisclosed income declared will not affect the finality of completed assessments.
- Undisclosed income declared will not be treated as benami transaction if the asset existing in the name of a benamidar is transferred to the declarant.
- In no case, Tax, surcharge or penalty paid under this scheme will be refundable.
- Exemption from wealth-tax in respect of assets specified in declaration.
- Declaration made under this scheme will not be admissible in evidence against declarant for any other proceedings of income of Income Tax and Wealth Tax.
- Transfer of asset's title from benami to the declarant till 30th September 2017.
- Unclaimed TDS credit for the period and income declared may be claimed
- The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988.
- Section 50C or section 43CA of I. T Act will not affect for valuation purpose.
- Value of the declared asset will be the declared value and date of acquisition will be 1st June 2016.
- The scheme is available for residents and non-residents as well.

INCOME TAX *(cont.)*

Clarifications / Assurance of the government:

- The information contained in the declaration will not be shared with other law enforcement agencies including income tax.
- The department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty either against the declarant or against the seller.
- Adopt this scheme and diffuse atom bomb, as proclaimed by the government.

Compiled by: Mumtaz Ahmad, Income Tax Advisor
