CNK & Associates LLP

Chartered Accountants

Quarterly Insights

January 2025

Domestic Tax

INDEX

Particulars	Page No
Exemption on account of reinvestment in residential property under section 54F not available for two flats if they cannot be considered as a single dwelling unit	2
Penalty under the Black Money Act (BMA) not leviable where non-disclosure of assets in Schedule FA is due to bona fide omission and the assets have been disclosed in another schedule in the return	2
If depreciable asset sold is a long-term capital asset, the rate of tax applicable would be that on long-term capital gains	3
Indexation benefit available to a resident in case of transfer of foreign assets	3
Stamp duty value of property not to be considered while reducing the written down value of such depreciable property if it does not result in capital gains	4

Judicial Decision

Exemption on account of reinvestment in residential property under section 54F not available for two flats if they cannot be considered as a single dwelling unit

Mrs. Kamla Ajmera v. PCIT [2024] 169 taxmann.com 119 (Delhi High Court)
In favour of Revenue

Facts

The assessee sold an inherited plot of land and used the proceeds to buy two flats located on opposite ends of two different floors in the same residential society. The assessee claimed exemption under Section 54F, treating the two flats as a single unit. The issue before the High Court was whether the term "a residential house" in Section 54F refers to a single unit or could include multiple units.

Held

The High Court denied the claim of exemption as purchase of two non-adjacent flats on different floors, even if located in the same residential tower, cannot be considered a single residential unit. The Court clarified that the word "a residential house" in Section 54F refers to a singular unit. The benefit of purchase of multiple units is available and may qualify as "a residential house" only if the flats or floors are constructed in such a way that they can be used as a single unit. The exemption was therefore, given only for 1 of the residential flats.

CNK Comments

This decision aligns with the earlier rulings that two adjacent properties can be considered as a one single unit for the purposes of section 54F or even section 54, if they are combined in a way that the multiple units are habitable as a single unit. As the exemption under section 54F also has a condition that the taxpayer should not be owning more than one flat before the reinvestment, one needs to be extremely careful while reinvesting the sales consideration in a residential property as to whether they can be considered as a single residential unit.

Penalty under the Black Money Act (BMA) not leviable where non-disclosure of assets in Schedule FA is due to bona fide omission and the assets have been disclosed in another schedule in the return

ACIT v. Chintan Sanjay Shah, BMA Nos. 31 and 32/Mum/ 2024, Mumbai- Tribunal
In favour of Assessee

Facts

The assessee, an Indian resident, made investment in offshore funds but missed to disclose these investments in Schedule FA of income tax return **(ITR)**. The same were, however, duly disclosed in Schedule AL under the item 'Shares and Securities' of ITR. The assessing officer imposed a penalty under section 43 of the BMA for non-reporting of the investment in the Schedule FA.

Held

The ITAT held that foreign assets were not entirely undisclosed, and that there was no mala fide intent or ulterior motive behind the assessee's omission. The ITAT further emphasized that the power to impose a penalty under Section 43 of the BMA for non-disclosure of foreign assets is discretionary. The penalties should not be levied for minor, genuine, or technical breaches of statutory obligations, especially where the actions of the taxpayer are bona fide.

CNK Comments

The disclosure of foreign assets by residents in the ITR *is extremely important as one has seen an increased scrutiny of such disclosure by the authorities in the recent times. Given that the BMA does not specify the schedule in the ITR under which the disclosure has to be undertaken, this is a welcome decision that provides relief to the taxpayer so long as the asset has been disclosed in some other schedule in the return. However, it also highlights the need for a taxpayer to ensure that the assets are duly disclosed in all the relevant schedules, especially schedule FA to avoid any penalty and litigation.*

If depreciable asset sold is a long-term capital asset, the rate of tax applicable would be that on long-term capital gains

SKF India Limited vs. Deputy Commissioner of Income Tax [(2024) 168 taxmann.com 328 (ITAT, Mumbai-Special bench)]

In favour of the Assessee

Facts

During the year, the assessee transferred immovable properties which formed part of block assets and depreciation was claimed on the same. In the computation of income, the assessee offered the capital gain arising from the transfer of these assets as short-term capital assets in view of provisions of section 50 of the Act. However, the rate of tax was applied as per section 112 of the Act, the rates being applicable to long-term capital assets since assets were held for a period more than 36 months.

The bone of contention in the case was the rate at which gains on sale of depreciable assets (exceeding the written down value) would be chargeable to tax, as the asset was held for more than 36 months.

Held

The ITAT (Special Bench) by majority amongst three Members held that gains arising from transfer of a depreciable capital asset, though 'deemed' to be short term capital gains, but that fiction must be confined only to computation methodology i.e. indexation u/s 48 is not available unlike in case of long-term capital gains. The deeming fiction under section 50 does not convert the nature of 'long term capital asset' into a 'short term capital asset' under the Act. Accordingly, even though such gains are categorized as short-term capital gains for the purpose of computation, the applicable rate of tax would be as per section 112 i.e. as applicable to long-term capital assets.

CNK Comments

This decision re-enforces the earlier rulings wherein the courts have held that the gains from sale of depreciable assets would be computed as short-term capital gain (without indexation), but the rate of tax will be that as applicable to long term capital asset. The authorities have also allowed certain exemptions (such as reinvestment in immovable property, which is available only to long-term capital gains) as available when long term capital assets are sold. That being said, there are practical challenges in implementing this view as the income tax utility to file return of income may automatically calculate tax at the rates applicable in case of short-term capital assets and there may be no option to compute tax at a beneficial rate.

Indexation benefit available to a resident in case of transfer of foreign assets

Deputy Commissioner of Income Tax vs. Aarav Fragrances and Flavors (P.) Ltd. [(2024) 169 taxmann.com 201 (ITAT, Mumbai)]

In favour of Assessee

Facts

Assessee, a resident company, sold shares of its foreign subsidiary company and computed long-term capital gain by reducing the indexed cost of acquisition of the shares. Assessing Officer took the view that cost of inflation index was determined on the basis of inflation taking place in India and, hence, assessee could not avail the benefit of cost of inflation index in respect of its foreign assets. Accordingly, he denied the benefit of cost inflation index and re-computed long-term capital gain.

Held

The ITAT held that once the capital gain is required to be computed as per section 48, then, the full effect should be given to the provisions of the section. There is no reference in section 48 that indexation benefit is available only to specific assets (except in the case of non-resident selling shares of an Indian company). The section does not distinguish between the assets held in India and held outside India. Therefore, the assessee would be entitled to the indexation benefit in respect of assets held in foreign countries.

CNK Comments

This decision is a welcome relief to resident assessees and distinguishes the earlier decision of ICICI Bank Limited (covered in our [April 2024 newsletter]) due to lack of clarity in the facts of the said case. After the amendment by the Finance Act (No. 2) 2024, this decision will have limited application as the indexation provisions have been deleted for most of the assets and assessees after 23rd July 2024.

Stamp duty value of property not to be considered while reducing the written down value of such depreciable property if it does not result in capital gains

3A Composites India (P.) Ltd vs. ACIT [(2024) 169 taxmann.com 72 (ITAT, Mumbai)]
In favour of the Assessee

Facts

Assessee had sold a factory building for a consideration of Rs. 2.45 cr. The property was a part of the block of assets and depreciation was claimed. In the assessment proceedings, the stamp duty value of the said building, which was substantially higher than the sale consideration, was reduced from the written down value (WDV) for calculating depreciation by the Assessing Officer in view of provisions of section 50C.

Held

The ITAT, Mumbai held that provisions of section 50C cannot be applied to the facts of the case, as in the present case, the block continued to exist and therefore, the issue was that of calculation of WDV for the purpose of computing Business Income. Provisions of section 50C to replace the stamp duty value with the actual sale consideration would operate in the domain of capital gains and not for the purpose of computing WDV and depreciation thereon.

CNK Comments

This decision of not adopting stamp duty value on sale of a depreciable asset has been rendered in a scenario where the block of assets continues to exist and for computing WDV and depreciation thereon. However, the applicability of the same where there is a capital gain on sale of depreciable assets needs analysis.

Disclaimer and Statutory Notice

www.cnkindia.com

CNK & Associates LLP
Chartered Accountants

Mumbai

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road, Churchgate, Mumbai 400 020.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G Road, Vile Parle (East), Mumbai 400 057.
Tel: +91 22 6250 7600

Chennai: +91 44 4384 9695
Vadodara: +91 265 234 3483
Ahmedabad: +91 79 2630 6530
GIFT City: +91 79 2630 6530
Bengaluru: +91 91 4110 7765
Delhi: +91 11 2735 7350
Pune: +91 20 2998 0865
Dubai: +971 4355 9533
Abu Dhabi: +971 4355 9544