CNK & Associates LLP
Chartered Accountants

Quarterly Insights
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Domestic Tax

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Judicial Decisions

Capital gains not taxable in hands of joint legal owner of the property who is not the beneficial owner

Vinod Nihalchand Jain Ltd. v. ITO, Ward-41(3)(4) in ITA. No. 6156/Mum/2024-ITAT, Mumbai
In favour of Assessee

Facts

The assessee and his father were made joint owners of the immovable property purchased by his brother out of love and affection. The entire consideration for the property was paid by the brother and the entire sales proceeds were also received only by the brother even though the assessee was a joint legal owner. The TDS deducted was also reflected in the name of the brother. The brother declared the entire capital gains from the sale in his return and claimed the benefit of section 54 by purchasing a new house property. However, the assessing officer added 50% of the total sale proceeds in the assessee's hands as he was a joint legal owner of the property.

Held

The ITAT observed that as the brother paid the entire purchase consideration for the purchase of the property and was in actual possession and also had 100% rights over the said property, he would be considered as the beneficial owner for 100% of the property. In such a situation, it was held that even though the assessee's name was mentioned in the purchase deed as one of the joint owners, the consideration received on the sale of the said property cannot be added in the hands of the assessee once assessee's brother has rightly declared and offered to tax the entire consideration in his return of income for the year under consideration.

CNK Comments

The decision re-emphasizes the principle that for tax purposes, the capital gains is taxable in the hands of the owner who actually paid for the property (or received by way of inheritance or gift) and who has received the sales consideration. With the property transactional information now readily available with the Income Tax Department, one should keep this in mind when responding to notices regarding such transactions. One needs to also ensure that TDS is appropriately deducted in the name of the person offering the income to tax to avoid any issues at the time of processing the return of income.

Gift from stepsibling to be considered as gift from 'relative' and exempt

Rabin Arup Mukerjea v. ITO [TS-298-ITAT-2025(Mum)]
In favour of Assessee

Facts

The assessee received a property as gift from his stepsister i.e. from the daughter of his father's wife. The tax authorities alleged that stepsister would not be considered as a 'relative' under the definition provided in the Income Tax Act, 1961, which includes a brother and a sister. Accordingly, the gift of the property received from the stepsister was sought to be taxed as income under section 56(2)(vii) at the stamp duty value of the property. The decision was upheld by the CIT(A).

Held

The ITAT relying on various laws and legal dictionaries to analyse the meaning of the term 'brother' or 'sister' held that a stepbrother or stepsister would also be considered as a 'relative' under the Act. The ITAT also referred to the definition of 'child' in the Income Tax Act which includes a stepchild, while concluding that any sibling by affinity would also fall with the definition of 'relative'. Accordingly, the ITAT held that the gift of property received from the stepsister would be gift from 'relative' and not taxable.

CNK Comments

This decision has relied on various laws to conclude that a sibling would include a stepsibling as well. However, not all laws provide so. For example, the Indian Succession Act, 1925 does not allow for assets to pass on to a stepchild (not legally adopted) unless provided in a will. Therefore, while this decision seeks to give a meaning beyond the literal meaning of the term 'brother' or 'sister', this issue may still be litigative.

Compensation received for relinquishment of 'right to sue' is a capital receipt & not chargeable to tax

DCIT v. Shelter Developers [TS-150-ITAT-2025(Mum)]

In favour of Assessee

Facts

The assessee, a partnership firm, had acquired the tenancy right in a piece of land, from certain persons who had fraudulently transferred rights to assessee. As a result, the assessee had filed various suits against the said persons. In accordance with consent terms filed before the Hon'ble Supreme Court, the assessee received a certain amount from the said sellers of the property in consideration for the assessee giving up its 'right to sue' the sellers and for withdrawal of the suits filed. In the return of income, the assessee offered the said amount received as income and claimed certain expenses which were disallowed by the tax authorities on the ground that such expenses were not genuine. The CIT(A) allowed the claim of the assessee and allowed the said expenses. Before the ITAT, the assessee raised an additional ground that the amount received was a capital receipt and not liable to tax. This argument was never put forth before the tax authorities nor the CIT(A).

Held

The ITAT after upholding its power to entertain a legal claim of the assessee for the first time not raised earlier, held that what was received as a compensation by the assessee was a capital receipt and not liable to tax. The ITAT held, that the payment was not received for a specific performance and nor was the right to sue assignable to any other person. It was therefore held that the said compensation received by the Assessee for giving up the 'right to sue' is a capital receipt, and hence not chargeable to tax.

CNK Comments

Various courts have held that the right to sue is a capital receipt and is not liable to tax. The present ITAT decision re-affirms the said principles laid down by the courts. However, one may need to evaluate if there is extinguishment of any other right along with the right to sue as that could have a different tax outcome.

Payment of 20% demand while filing appeal before CIT(A) is not mandatory

Haji I. Asarab Ali vs. ITO [TS-314-HC-2025(MAD)]

In favour of the Assessee

Facts

The assessee had filed an appeal before the CIT(A) against the assessment order. The tax authorities passed another order directing the assessee to pay 20% of the demand. The assessee filed a writ petition before the High Court against this order of demand.

Held

The High Court observed and held that instruction issued by the CBDT for recovery of tax demands, which provides for payment of 20% of the demand, is not mandatory. The condition to make payment of 20% of tax demand is a requirement only for a stay of application and accordingly, the demand was stayed as well as the CIT(A) directed to dispose the appeal within 3 months.

CNK Comments

While the High Court directed that the payment of 20% of the demand is not mandatory, practically, in most situations, the tax authorities insist on the payment of 20%. While the assessees may refer to this order of the Madras High Court, one may not always succeed in receiving a stay of the demand. In such a case, depending on the facts of the case as well as the financial impact, one may consider either applying to the Commissioner for a stay or a writ before the High Court.

Where intent to let out property is evident no deemed rental income chargeable even if property remains vacant throughout the year

Classic Mall Development Company Ltd. Vs. Asst. Commissioner of Income Tax [TS-304-ITAT-2025(Mum)]

In favour of the Assessee

Facts

Assessee was earning rental income by letting out units in the mall. During the year, out of 261 units, 253 units were let out. The tax authorities sought to tax the notional rent on the remaining 8 units which were not let out at all during the year. While the provisions of the Act do provide for a vacancy allowance i.e. no deemed rent to be charged in respect of a property which was let out earlier and is vacant during the year, the tax authorities sought to argue that such exemption applied only if the property was let out at any time during the year and does not apply when the property is vacant for the whole year.

Held

The ITAT held that as the intention of the assessee to let out the property was evident from the fact that the properties were let out in earlier years and also let out in subsequent years, notional rent cannot be taxed and vacancy allowance is to be given. The ITAT held that actual letting out during the year is not a prerequisite for claiming vacancy allowance if the property was held for the purpose of letting and was let in the earlier period but remained vacant throughout the year.

CNK Comments:

This is an important decision which can be used to defend in situations where the property was available for letting out but remained vacant for the whole year. However, it is important to substantiate the intention of letting out by way of documents and other evidence to avoid litigation on this matter.

Circulars/Notification

CBDT Notifies last date for filing declaration under the Direct Tax Vivad se Vishwas Scheme, 2024

[Notification No.32/2025 F. No. 370142/9/2025-TPL dated 08 April 2025]

The last date for filing an application under the Direct Tax Vivad se Vishwas Scheme, 2024 is notified as 30 April 2025. The Scheme allows a taxpayer to pay only the tax component without penalty or interest and end any pending tax litigation.

CBDT allows waiver on levy of interest under section 201(IA)(ii)/206C(7) in specific cases

[Circular No. 5/2025. F.No.275/92/2024-IT dated 28 March 2025]

The CBDT has directed the tax authorities to waive or reduce any interest on account of any TDS or TCS payment defaults in cases where there were technical glitches, and such tax could not be deposited.

Finance Minister introduces the Income Tax Bill, 2025

As announced in the Budget speech, the Finance Minister introduced the Income Tax Bill, 2025 to replace the existing Income Tax Act, 1961. The objective of the new bill is to make it more readable and easier to understand, structurally as well as linguistically, without effecting any policy change from the existing law.

The Bill is now being examined by the Parliamentary Committee which shall present its findings, and the Bill is expected to be passed in the monsoon session of the Parliament.

If enacted, the new Bill will come into effect from 1 April 2026.

Finance Act, 2025 enacted

The Finance Bill, 2025 presented by the Finance Minister on 01 February 2025 was passed by the Lok Sabha on 25 March 2025 with certain amendments. The Finance Act, 2025 received presidential assent on 29 March 2025 and has been published in the official gazette. While the readers may refer to CNK Annual Budget for the changes proposed in the Finance Bill, 2025, below are the key changes introduced by the Finance Bill during the legislative process before its enactment into law.

- **Withdrawal of 6% equalisation levy (EL)**
  While EL on-e-commerce supply of goods and services was abolished, the 6% EL on online advertisement was still in force. Now, the EL on online advertisements has also been abolished in respect of any services received on or after 1 April 2025.

- **Indirect Participation not to be considered for 5% threshold limit specified for eligible Investment Funds**
  The activities of a fund manager in India shall not constitute any taxable presence for an overseas fund if certain conditions are satisfied. One of the conditions was that the participation in the fund by Indian residents directly or indirectly does not exceed 5% of the Fund's corpus. Now, indirect participation by Indian residents in the Fund shall not result in the violation of the above condition and only direct participation is to be considered.

- **Other provisions relating to taxation of royalty and fees for technical services to not apply to a non-resident who is eligible for taxation under the presumptive scheme of tax for income from Indian companies engaged in electronic manufacturing under the scheme of the Government**

- **Widening the scope of adjustments under section 143(1)**
  The scope of adjustments to the income tax return that can be made by the Central Processing Centre while processing the return is now extended to include any prescribed inconsistency in the return with respect to the information in the return of any preceding year.

- **Amendments related to International Financial Services Centre (IFSC)**
  - Exemption extended to the distribution of income on Over-the-Counter derivatives, where such contracts are entered into by a non-resident with either Overseas Banking Units or Foreign Portfolio Investors located in IFSC.
  - Retail schemes or ETFs in IFSC eligible for exemption on merely satisfying the conditions under the IFSC Regulations.
  - Securities held by IFSC registered Cat-I and Cat-II AIF to also be considered as a capital asset.

- **Block assessment provisions in search cases have been further streamlined**

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