

Domestic Tax

INDEX

<u>Particulars</u>	<u>Page No</u>
Key changes to Finance (No.2) Bill, 2024 on enactment	2
Judicial Decisions	2
Circulars and Notifications	5

Key Amendments in Budget 2024 at the time of enactment

The Finance (No.2) Bill, 2024 was presented by the Hon'ble Finance Minister on 23rd July 2024. At the stage of enactment, certain changes were made to the proposals. The key changes are highlighted below:

- Indexation benefit has been restored for resident individuals and HUF in the case of sale of immovable property which has been acquired before 23rd July 2024. Now such taxpayers would have a choice to either pay long term capital gains tax at the rate of 12.5% (plus applicable surcharge and education cess) without considering the impact of indexation OR 20% (plus applicable surcharge and education cess) after considering the impact of indexation.
- The benefit of computing the long-term capital gains in foreign exchange in the case of sale of unlisted shares is no longer available for non-residents. The benefit, which was earlier not available, was proposed to be allowed in the Finance Bill. However, at the time of enactment, such proposal was cancelled.
- Credit of TCS would be available to reduce the TDS applicable on salary. The amendment proposed in the Finance Bill did not allow the credit of TCS to reduce the TDS applicable on salary income. Such credit was only proposed to be adjusted against tax payable on income other than salary. This anomaly has now been removed and TCS credit can be considered by the employer to reduce the TDS on salary.

CNK Comments:

Readers may refer to the [Budget Publication of July 2024](#) and the above changes are only those made to the announcement in the Budget. The partial restoration of indexation for immovable property has been made after multiple representations were made. However, this benefit is available only to resident individuals and HUF.

While the long-term capital gains on sale of unlisted shares by non-residents would continue to be

computed without foreign exchange benefit, the question arises as to what would be the case if the amount computed in foreign currency is a loss and the amount computed without considering the foreign currency results in gains.

Judicial Decisions

Depreciation on revalued assets in case of succession of business

Pr. Commissioner of Income-tax vs. Dharmanandan Diamonds (P) Ltd. (164 taxmann.com 465) (Supreme Court)

In favour of taxpayer

Facts

The assessee company acquired the business from a partnership firm. During the year of the acquisition, depreciation was claimed by the assessee on the written down value (WDV) of the assets in the hands of the predecessor of the business i.e. the partnership firm. However, in the subsequent year, the depreciation was computed on the value at which such assets were acquired and accounted in the books of the assessee. Such a claim was disallowed in the second year on the grounds that depreciation is to be computed based on the WDV of the predecessor of the business as per the 6th proviso to section 32.

Held

The Supreme Court dismissed the appeal filed by Revenue against the order of the Bombay High Court on merits. The Bombay High Court had held that the proviso to section 32, which requires the successor of the business to claim depreciation on the WDV of the assets in the hands of the predecessor, only applies in the year of the transaction and for the subsequent years, the depreciation to be claimed would be the value at which the assets were acquired.

CNK Comments:

The dismissal of the Supreme Court on merits provides much relief to taxpayers. Generally, one accounts for the assets acquired based on the value by allocating the purchase price to various assets acquired.

This revalued amount signifies the amount actually paid by the buyer towards the assets and therefore, depreciation should also be permitted on such value, as held by the High Court and approved by the Supreme Court.

While this decision was in the context of acquisition of business, whether one can apply the same principle for a merger or demerger may need to be examined in detail.

Contingent consideration taxable in the year in which right to receive enforceable Huntsman Investments (Netherlands) BV v. DCIT (166 taxmann.com 63) (Mumbai ITAT)
In favour of taxpayer

Facts

The assessee sold shares of certain entities held by it to the buyer. The Share Purchase Agreement provided for two tranches of consideration payable – first was immediately payable and the balance was deferred and was payable only on the fulfillment of certain conditions. As the conditions were only fulfilled in the subsequent year, the deferred consideration was offered for tax in that year and not in the year of transfer. The entire amount of consideration (including the deferred consideration) was sought to be taxed in the year of transfer.

Held

As the conditions for the deferred or contingent consideration were not fulfilled in the year of transfer, the taxpayer seller did not have any enforceable right to receive such consideration in that year. Such consideration was taxable only in the year in which the right to receive the contingent consideration was enforceable by the seller.

CNK Comments:

This decision re-enforces the principle laid down by earlier decisions of the High Court wherein the consideration is not taxable unless the seller has the right to receive such consideration. In the absence of such a right one cannot state that the consideration has accrued to the seller to trigger tax implications even

though the asset may have been transferred in that year. However, one may need to distinguish cases where the consideration is not contingent on a particular condition or event but is merely payable subsequently.

On approval of IBC resolution plan, no reassessment proceedings for year prior to such approval

Uttam Galva Metallics Ltd v. ACIT (166 taxmann.com 492) (Bombay High Court)
In favour of taxpayer

Facts

The assessee had entered into Insolvency and Bankruptcy Code (IBC) proceedings and the resolution plan was duly approved by the National Company Law Tribunal (NCLT). The resolution plan included the waiver of tax and tax-related liabilities. After the approval of the resolution plan, the Assessing Officer initiated reassessment proceedings for the assessee in respect of a period prior to the approval of the resolution plan.

Held

No assessment or reassessment proceedings can be initiated against the assessee for any year prior to the approval of the resolution plan, once such resolution plan is approved by the NCLT under the IBC proceedings.

CNK Comments:

The High Court has upheld the principle of IBC proceedings wherein the buyer of the corporate debtor (company which is under the IBC proceedings) is given a 'clean slate' in respect of the said debtor and no liabilities (other than accepted claims) can arise for a period prior to the date of the resolution plan, once the plan is approved by the NCLT. The IBC is a code in itself and overrides all other Acts, including the Income Tax Act. The Delhi High Court and Gujarat High Court have also upheld the same principles in respect of reassessment proceedings.

Face value to be considered as the fair market value for shares issued to employees under ESOP if such shares were subject to lock-in period

Ravi Kumar Sinha v. CIT (165 taxmann.com 472)
(Delhi High Court)

In favour of taxpayer

Facts

The assessee was allotted certain shares of his employer during the year under the Employee Stock Purchase Scheme. The shares were subject to a 12 to 18-month lock-in period within which they could not be sold. The assessee did not offer any income to tax on the grounds that as the shares were subject to lock-in, the face value of such shares would be the fair market value. The employer had as an abundant caution obtained a valuation report wherein the fair market value was shown higher than the face value. The Assessing Officer and CIT(A) sought to tax the employee on the basis of the fair market value mentioned in the valuation report, which was upheld by the ITAT.

Held

The High Court held that as the shares were subject to a lock-in period, the fair market value could not exceed the face value as there was a restriction with respect to the marketability and tradability of the shares. With regards to the valuation report, the High Court ignored such report as such report was obtained by the employer out of abundant caution to compute the TDS on perquisite on the ESOP.

CNK Comments:

The decision of the High Court lays down the principle as to what constitutes fair market value in case of restriction on the marketability of the shares. The question that may, however, arise is whether one can apply such principle laid down by the High Court in the case of transactions wherein the formula for determining the fair market value is prescribed in the Rules.

Circulars/ Notifications

Direct Tax Vivaad Se Vishwas, 2024 Rules notified

[Notification No. G.S.R. 584\(E\) \[No. 104/2024, F. No. 370142/16/2024-TPL\]](#), dated 20th September 2024

The Direct Tax Vivaad Se Vishwas, 2024 Rules and the forms have been notified. The Scheme has been introduced to reduce the pending litigation. The amounts payable under the Scheme (one may also refer to our [Budget 2024 Newsletter](#) for detailed write-up on the Scheme) has been provided below (no change from the Scheme introduced in the Budget):

Particulars	On or before 31 st December 2024	On or After 1 st January 2025
Appeal filed after 31 st January 2020 up to 22 nd July 2024 (Tax arrears *)	Amount of disputed tax	Amount of disputed tax plus 10%
Appeal filed before 31 st January 2020 pending at the same appellate forum (Tax arrears *)	Amount of disputed tax plus 10%	Amount of disputed tax plus 20%
Appeal filed for Interest / penalty / fee after 31 st January 2020 up to 22 nd July 2024 (Tax arrears #)	25% of the disputed interest OR disputed penalty OR disputed fee	30% of the disputed interest OR disputed penalty OR disputed fee
Appeal filed for Interest / penalty / fee before 31 st January 2020 pending at the	30% of the disputed interest OR disputed penalty OR disputed fee	35% of the disputed interest OR disputed penalty OR disputed fee

Particulars	On or before 31 st December 2024	On or After 1 st January 2025
same appellate forum (Tax arrears #)		
<p><i>*Tax Arrear = disputed tax plus disputed interest plus disputed penalty</i></p> <p><i>#Tax Arrear = disputed interest OR disputed penalty OR disputed fee</i></p>		

The amount payable will be half of the above amounts in relation to the issues where:

- An appeal is filed by the tax authorities.
- An appeal is filed before the CIT(A) / JCIT(A) / ITAT or objections are filed before the Dispute Resolution Panel (DRP) for a matter in respect of which the Appellant has received a favorable decision by the higher authorities and the said decision has not been over-ruled.



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