

Direct Tax Vista

Your weekly Direct Tax recap

Edn. 61 – 6th June 2023

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1. Angel Tax: Valuation method u/r 11UA adopted by assessee is final

Section 56(2)(viib) and Rule 11UA of The Income Tax Law providing for various methods of determining the fair value of shares has been much deliberated post budget 2023. Post bringing the non-resident assesses also in the ambit of Angel Tax, the CBDT has prescribed many methods of valuation of shares. Now the question is whether in case the assessee opts for determination of the fair market value of the shares by opting for any of the methods prescribed under rules, then can the AO reject that method itself? Or should the AO only limit himself to scrutinizing the valuation report within the conditions or parameters laid down in the method chosen by the assessee?

This was answered in the case of *Innoviti Payment Solutions Pvt. Ltd. Vs. ITO* reported in (2019) 102 taxmann.com 59 (Bangalore Trib) wherein the co-ordinate Bench of the Tribunal held that the method adopted by the assessee has to be accepted by the AO. The AO can of-course point out any defect in the implementation of the valuation method. The same was also held in the case of *THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16(1), HYDERABAD Vs M/s NCL GREEN HABITATS PRIVATE LIMITED* [2023-VIL-717-ITAT-HYD].

2. E-Appeal Scheme for Appeal to JCIT(A) notified

In view of the pile up of cases at the CIT(A) stage, the Finance Act 2023 had inserted a new section 246 in Chapter XX with effect from 01-04-2023 for filing of appeal before the Joint Commissioner of Income-tax (Appeals) [JCIT (Appeals)]. An assessee can prefer an appeal with the JCIT (Appeals) against the following orders relating to the assessment:

- (a) An intimation issued under Section 143(1)

- (b) Order passed u/s 143(3) or best judgment order u/s 144
 - (c) Order of assessment, reassessment or recomputation under Section 147;
 - (d) Intimation u/s 200A (1), i.e., processing of TDS statement;
 - (e) Intimation u/s 206CB(1), i.e., processing of TCS statement;
 - (f) Intimation u/s 206C(6A) treating a collector of TCS as assessee-in-default;
 - (g) Order u/s 201 treating a deductor as an assessee in-default;
 - (h) An order imposing a penalty under Chapter XXI (Section 270A to 275);
- and
- (i) Rectification u/s 154 or 155 amending any of the orders mentioned above.

As per Section 250(6A), the JCIT (Appeals) and Commissioner (Appeals) may decide the appeal within 1 year from the end of the FY in which the appeal was filed u/s 246(1)/(2)/(3) or 246A(1).

Vide Notification No. 32/2023 dated 29th May 2023, Rule 45 and Form 35 have been amended to be applicable for filing Appeal before the JCIT(A) also and Rule 46A has been amended to provide the grounds for admitting evidences other than those evidences taken up in prior stage.

Further to implement the functioning of the JCIT (Appeals), the CBDT has rolled out e-Appeals Scheme, 2023, effective from 29-05-2023 vide N No 33/2023. The key highlights of the Scheme are:

1. Important is that the communication between the JCIT(A) and assessee is vide the Income Tax Portal and not through the NFAC, which shall make the communication more smooth and quicker.
2. Allocation to JCIT(A) random - The Pr DGIT(Systems) or the DGIT (Systems), shall devise a process to randomly allocate or transfer the appeals to the JCIT (A).
3. Procedures which JCIT(A) should adhere to are as follows :

A. The appellant would get a notice from JCIT(A) to file his submissions within the prescribed time. A copy of such notice shall also be furnished to the AO.

- B. JCIT (A) may seek further information, document or evidence from the appellant or any other person. A report of AO on the grounds of appeal or information, document or evidence furnished by the appellant may be required too.
- C. Both the appellant or AO may file additional grounds of appeal or any document or evidence, or the examination of any witness may be requested, but subject to Rule 46A
- D. The JCIT (A) shall prepare a SCN containing the reasons if he intends to enhance an assessment or a penalty or reduce the refund amount.
- E. The JCIT (A) shall prepare an appeal order in accordance u/s 251 stating the points for determination, the decision thereon and the reason for the decision.
- F. For non-compliance with any notice, direction or order, the JCIT (A) is authorised to issue a SCN for initiating the penalty proceedings. After considering all the relevant materials and response to the notice issued, he shall prepare a penalty order or drop the penalty proceedings as the case may be.
- G. To rectify any mistake apparent from the record, JCIT (A) can amend any order upon receiving an application from the appellant or the AO.

An appeal against an order passed by the JCIT (A) under this scheme shall lie before the Jurisdictional ITAT.

3. Not all Cesses are disallowed even after Finance Act 2022

Vide Finance Act 2022 Explanation 3 has been inserted retrospectively in Section 40(a)(iii) of the Income Tax Act to clarify that for the purposes of the sub-clause, the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. However, this cess is only the 'cess on tax' and not any other cess. All other cesses which are not on tax remain deductible under the Income Tax Act. Therefore cess under the Jute Manufacturers Cess Act, 1983, not collected from the customers becomes the cost of the assesses and is deductible while computing total income as was held in the case of DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(1), KOLKATA Vs M/s CHEVIOT COMPANY LIMITED [2023-VIL-712-ITAT-KOL].

4. Burden of proving PE in India is initially on the Revenue

Where an event itself does not happen in India, then payment to a Non-resident for non-happening of such an event in India cannot be considered to have been attributable towards any operations in India, as the payment itself is towards non-performance of the operation. As per Explanation 1(a) to Section 9(1)(i) of the Income Tax Act, it is only that portion of income which is “reasonably attributable” to operations carried out in India which shall be deemed to accrue or arise in India for purpose of taxation under the Act. The burden of proving the fact that a foreign assessee has a PE in India and must pay tax on the income of such PE is initially on the Revenue, as has been held by The Hon’ble Supreme Court in ACIT vs E-Funds IT Solution Inc, (2017) 399 ITR 34 (SC). Hence PE cannot be deemed in every case where a payment is made to a non-resident as was held in the case of THE BOARD OF CONTROL FOR CRICKET IN INDIA Vs DY. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-6(2), MUMBAI [2023-VIL-706-ITAT-MUM].

5. Monetary limits for the Income-tax officers to accept/reject requests u/s 119 revised

The CBDT vide Circular 9/2015, dated 09-06-2015, issued instructions to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming to carry forward of loss and set-off thereof under section 119(2)(b). Said circular prescribed comprehensive guidelines on the conditions and procedure to be followed for deciding applications for condonation of delay in filing returns of income. In a routine Circular, the monetary limits for the Income-tax officers to accept/reject requests for condonation applications have been revised vide Circular No. 07/2023, dated 31-05-2023.

6. Depreciation on software

Many a times it is contested whether the depreciation rate on software will be 25% as applicable to intangible asset or 60% as applicable to computer. The matter has been settled in many cases wherein depreciation on computer software/programme recorded on any disk, tape or any other information storage device purchased alongwith Computer will be depreciated at 60% and purchase of specific software, not supplied along with the computer will be depreciated at 25% as a license. The

same has been confirmed in favour of the appellant in the case of THE DCIT, CIRCLE-4(1)(1), AHMEDABAD Vs SMILE INDIA KNOWLEDGE SERVICES PVT LTD [2023-VIL-684-ITAT-AHM]. The issue is only how to substantiate with evidence, the facts of each case.

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