

INTER-RELATIONSHIP BETWEEN ACCOUNTING AND TAXATION

Some Key Points

Accounting is the foundation on which the provisions of tax laws are applied. The books of account maintained by the assessee forms the basis for taxing an event or transaction. However, in the recent times some of the provisions in the tax laws are enacted for the sake of ease in implementation and hence have dispensed with the requirement of relying on books of account and resorted to collection of taxes by way of deeming / presumptive provisions.

Similarly, to regulate the taxpayers some deeming provisions are inserted in the tax law to allow certain deductions on actual payment basis or tax certain incomes on actual receipt basis. Section 43B is a provision allowing deduction on actual payment basis and section 56(2)(viii) relating to interest on compensation / enhanced compensation provides for taxing a receipt on actual receipt basis.

Sections 43B, 115JB and 145A are some of the legal provisions which override or even negate the time tested accounting practices. Similarly, presumptive provisions such as sections 44AD, 44AE, 44B, 44BB, 44BBA are meant for estimation of deemed income for tax purposes and thus shifting the basis of determining the income away from the books of account.

Enhancing the turnover limit for getting the accounts audited under section 44AB and prescribing presumptive income scheme for all assessees (except LLP and corporates) under section 44AD in respect of business income signifies simplification and acceptance of approximate income determination by the tax administration in the recent times.

Question 1

ABC Co. Ltd engaged in manufacture of boilers received a subsidy of Rs.20 lakhs from the Government for having commenced an industry in a backward area. The assessee claims that the subsidy so received is not liable to tax and accordingly credited the subsidy directly to capital reserve account. Is the contention of assessee, valid in law?

Answer

The Supreme Court in its judgment in the case of *Sahney Steel And Press Works Ltd v. CIT* (1997) 228 ITR 253 (SC) has held that the payment from public funds to assist the assessee

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in carrying on trade or business must be treated as revenue receipt. The subsidy granted to the assessee such as sales tax refund, power concession or refund of bills paid and exemption from payment of water charges are to be treated as revenue receipts chargeable to tax. It was held that the character of the subsidy in the hands of the recipient will have to be determined having regard to the purpose for which the subsidy is given.

The subsidy in this case, was received as a matter of encouragement to commence an industry in a backward area. Whether it is received before or after commencement of production is of no consequence. Therefore, the subsidy so received as a matter of incentive is not liable to tax. However, if the subsidy was by way of refund of sales tax or power consumption etc then it is liable to tax.

Question 2

Critically analyse the validity or otherwise of the proposition that income computed on the basis of method of accounting is no longer a binding factor for taxation of income.

Answer

As per the provisions of section 145, assesseees can follow either cash or mercantile system of accounting in respect of income from business or profession. However, even in cases where mercantile system is followed certain deductions are allowed only on actual payment basis. Such provisions are briefly outlined as under:

Section 40A(7) – Provision for gratuity allowable on payment basis only.

Section 43B – This is one of the most important provisions in this regard and the items covered by this section are deductible only on payment basis. They are -

1. Tax, duty, cess or fee.
2. Contribution to any provident fund, superannuation fund, gratuity fund or welfare fund.
3. Payment of bonus or commission.
4. Interest payable to certain financial institutions.
5. Interest payable to scheduled banks.

Section 56(2)(viii) provides for taxation of interest received on compensation or enhanced compensation on receipt basis with deduction at 50% prescribed in section 57(iv).

Thus the proposition given above is correct.

Question 3

State the tax provisions which provide for determination of income ignoring the books of account and method of accounting of the assessee.

Answer

Section 44AD provides for presumptive determination of income for computing profits and gains of any business (other than those covered by section 44AE) meant for resident assessee by deeming income at 8% of the turnover. However, to opt this presumptive provision the turnover of the assessee from business should not exceed Rs.60 lakhs. This presumptive provision however is not applicable in respect of income from profession.

Section 44AE is meant for persons carrying on the business of plying, hiring or leasing goods carriages. The revised presumptive income rates are Rs.5,000 per month or part of a month in respect of each heavy goods vehicle and Rs.4,500 per month for each other goods vehicle from the assessment year 2011-12 onwards.

Section 44B prescribes presumptive income determination in the case of non-residents engaged in shipping business at 7.5% of the aggregate amounts (i) received for carriage of passengers, livestock, mail or goods shipped at any port in India; and (ii) any amount received or deemed to be received in India on account of the aforesaid items shipped at any port outside India.

Section 44BB applicable for non-residents engaged in the business of providing services or facilities in connection with supplying plant and machinery on hire which are used in the prospecting for or extracting or production of mineral oils by deeming income at 10% of amounts received towards provision of services and facilities.

Section 44BBA is a presumptive income scheme meant for computing deemed business income from operation of aircrafts in the case of non-residents and the presumptive income rate is prescribed at 5% of the amounts received or deemed to be received from any place in India or outside India towards carriage of passengers, livestock, mail or goods to India.

Section 44BBB for foreign companies engaged in the business of civil construction or erection of plant and machinery or testing or commissioning thereof in connection with turnkey power projects approved by the Central Government. The presumptive income chargeable on deemed basis is at 10% of the amounts so received by the foreign company.

Question 4

Tax provisions override the accounting practices since the tax provisions are meant for achievement of certain desired objectives.

Answer

True that the tax provisions override the accounting practices as the tax provisions are specifically designed to achieve the desired objectives. The Apex Court, in *Tuticorin Alkali Chemicals & Fertilizers Ltd v. CIT* (1997) 227 ITR 172 (SC), made reference to the case of *B.S.C.Footwear Ltd v. Ridgway (Inspector of Taxes)* (1970) 77 ITR 857, 860 (CA) wherein the court rejected the argument of well settled accountancy practice as a basis for accepting the same for tax purposes.

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The Court held that the income-tax law does not march step by step in the divergent footprints of the accountancy profession. Even a consistent accounting practice could not be treated as having the sanction of law and would not be acceptable for the purpose of computation of taxable income.

Question 5

Explain how the accounting principle is applied on dissolution of firm for tax purposes.

Answer

The going concern concept of accounting provides for valuation of inventory at cost or market price whichever is less. However, on dissolution of firm there is settlement of account inter se amongst the partners. The accounting practice prescribes valuation of inventory on market value basis. The provisions of tax law do not provide for such market price valuation though section 45(4) prescribes for adopting market value in respect of capital assets.

The Apex Court in *ALA Firm v. CIT (1991) 189 ITR 285 (SC)* has held that when the firm is dissolved and business is discontinued, the closing stock is to be valued at market price and not at cost. It is possible to argue that the tax law also provides for such valuation by means of section 45(4) by interpreting that on dissolution and discontinuance of business, the stock in trade loses the exception prescribed in section 2(14) and becomes a capital asset, thus falling within the domain of section 45(4).

It may be of interest to note that when there is dissolution of firm by operation of law but there is no discontinuance of business, the stock valuation will not be at market price as held in *Sakthi Trading Co. v. CIT 250 ITR 871 (SC)*.

Even dissolution of firm due to demise of one partner and continuation of business by the other partner as proprietor was held as not within the ambit of section 45(4) as held in *CIT v. Moped & Machines (2006) 281 ITR 52 (MP)* on the reasoning that there was no transfer as contemplated under section 2(47) of the Act.