

Direct Tax Vista

Your weekly Direct Tax recap

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1. Investing in Sovereign Gold Bonds this Winter

Tax people should also invest their monies wisely and Sovereign Gold Bonds are instruments where the capital gains tax arising on redemption to an individual is exempted. The indexation benefits will be provided to long term capital gains arising to any person on transfer of the SGB. Interest on SGBs, though, shall be taxable as per the provision of Income Tax Act, 1961. These SGBs are restricted for sale to resident individuals, HUFs, Trusts, Universities and Charitable Institutions. The SGB 2023-24 Series III will be open for subscription from December 18-22. The date of issuance for this SGB tranche is December 28. The second tranche of the Sovereign Gold Bonds scheme will be open for subscription from February 12-16, 2024 and will be issued on February 21, 2024.

The SGBs will be denominated in multiples of gram(s) of gold with a basic unit of One gram. The tenor of the SGB will be for a period of eight years with an option of premature redemption after 5th year to be exercised on the date on which interest is payable. Minimum permissible investment will be One gram of gold. The maximum limit of subscription shall be 4 Kg for individual, 4 Kg for HUF and 20 Kg for trusts and similar entities per fiscal year (April-March), as notified by the Government from time to time. A self-declaration to this effect will be obtained from the investors at the time of making an application for subscription. The annual ceiling will include SGBs subscribed under different tranches, and those purchased from the secondary market, during the fiscal year.

The investors will also be paid a fixed rate of 2.50% per annum payable semi-annually on the nominal value. Price of SGB will be fixed in Indian Rupees on the basis of simple average of closing price of gold of 999 purity, published by the India

Bullion and Jewellers Association Limited (IBJA) for the last three working days of the week preceding the subscription period. The issue price of the SGBs will be less by ₹50 per gram for the investors who subscribe online and pay through digital mode. The redemption price will be in Indian Rupees based on simple average of closing price of gold of 999 purity, of previous three working days published by IBJA Ltd.

2. Challenging the validity of the notice issued u/s. 274 r.w.s. 271 of Income Tax on the ground of non- striking of the irrelevant limb in the notice

It was held by The Apex Court in the case of Rajesh Kumar v. CIT [(2007) 2 SCC 181] that when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. A notice for penalty should thus not be routine, ritualistic and omnibus. Even if a notice for penalty contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. The validity of the notice issued u/s. 274 r.w.s. 271 of the Income Tax Act was thus challenged successfully on the ground of non- striking of the irrelevant limb in the notice In the case of 2023-VIL-1625-ITAT-MUM DY. CIT(IT) – 3(1) Vs M/s GLOBAL CRICKET CORPN PTE LTD, as this vitiates the penalty proceedings.

3. Excel Sheets cannot be considered as parallel books of account

An interesting order in the matter of Sections 143(3) and 153A of Income Tax Act was passed in the case of SUMATICHAND TOLAMAL GOUTI Vs DY. COMMISSIONER OF INCOME TAX [2023-VIL-1629-ITAT-MUM]. Excel sheets were rejected for the purpose of making additions in various instances.

Job work charges - Primary basis of making addition is the excel sheets found and seized during course of search, contents of which are explained by workers in their respective sworn statements and the Said workers had retracted their statements immediately after search on ground that original statements were recorded from them under pressure. Such ground was deleted by The Hon'ble Tribunal.

Wastage Expenses - AO compared wastage appearing in excel sheets with wastage booked in regular books of accounts and held that there is an excess reflected in books and accordingly, proceeded to disallow excess wastage charges. It was held that Excel Sheets cannot be considered as parallel books of account and they are merely controlling sheets maintained by employees for computation of jewellery after giving credit or deduction for standard quota of wastage.

Stock - Data maintained in Excel Sheet was considered to be parallel books by AO and accordingly made addition. Action of AO in relying completely on excel sheet ignoring the factual deficiencies in these sheets while computing stock position of assessee for earlier years was not found to be in order.

4. Apex Court defines market value

Where a person imposes stringent conditions to sell goods in the open market, making it unviable for third party consumers to purchase such goods and thus virtually forces a sale to itself, such a sale price cannot be called 'market price'. In order to determine the market price of any goods or services, open market conditions must exist i.e. there must be willingness on the part of the buyer to purchase and the seller to sell the goods. In such a situation, the price determined by the market forces of demand and supply is the market price of such goods. However, in case of any transaction of purchase and sale taking place on account of certain obligations on the part of either side affecting the determination of the price of the goods, such a price cannot be said to be the market price.

"Market value" is an expression which denotes the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction takes place in the normal course of trading. In the case of COMMISSIONER OF INCOME TAX Vs M/s JINDAL STEEL & POWER LIMITED [2023-VIL-29-SC-DT], it was held that determination of tariff between the assessee and the State Electricity Board cannot be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business i.e., in the open market. Such a price cannot be said to be the price which is determined in the normal course of trade

and competition. Market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier i.e., sold by the assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market.

5. Suo-motto add back of expenditure, on which no TDS is applied, does not exonerate assessee from liability of interest under Section 201(1A)

Provision of expenses in the form of estimates follows from preexisting contracts with the known parties for identified services and hence the accounting of amount liable to be paid to these parties for services availed is subject to tax deduction at source. Even incase an assessee on his own adds back the expenditure, such disallowance does not exonerate the assessee from the liability of interest under section 201(1A) of the Income Tax Act.

Where the assessee is making the year end provisions, on which tax is required to be deducted by assessee, but has not been deducted; subsequently when bills are received, assessee has deducted tax at source and deposited it to credit of Government; it was held in the case of ZEE ENTERTAINMENT ENTERPRISES LIMITED Vs THE JOINT COMMISSIONER O F INCOME TAX [2023-VIL-1617-ITAT-MUM] that according to provisions of Section 201(1A) of the Act, if any person does not deduct tax at source, he shall be liable to pay simple interest at rate of 1% for every month or part of month on amount of such tax from date on which such tax was deductible to date on which such tax is deducted; Disallowance of expenditure, on which no taxes deducted at source, by assessee on its own does not exonerate assessee from liability of interest under Section 201(1A) of the Act. Liability of interest under Section 201(1A) of the Act is mandatory and Interest charged by AO under Section 201(1A) of the Act is justified.

6. For availing Foreign Tax Credit, filing of Form 67 is a procedural / directory requirement and is not a mandatory requirement

Where an assessee is entitled to claim relief under section 90 of the Income Tax Act, no disallowance can be made on the sole ground that the form 67 prescribed under section 128(8) was not filed within the time stipulated under Rule 128(9). It was held in the case of SHRI SUDERSHAN CHITLANGIA Vs THE ACIT CIRCLE-6, JAIPUR [2023-VIL-1615-ITAT-JAI] that filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement. Violation of procedural norms does not extinguish substantive right of claiming Foreign Tax Credit (FTC). As assessee has vested right to claim FTC under tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision. Where the claim of assessee is duly supported by revised return of income and form no.67 which is also filed on date of filing of revised return, assessee is entitled for relief of FTC under Section 90 of the Act.

7. Processing Fee of Loan taken for acquiring a Capital Asset is allowable as a deduction in the year of expenditure

Funding is required in business from time to time and these are regular business expenses and the charges for such loans taken are allowable as a deduction in the year of incurring such expense itself. This is a settled position and was again reiterated in the case of PR. COMMISSIONER OF INCOME TAX -4, NEW DELHI Vs INDUS TOWERS LTD. [2023-VIL-147-DEL-DT]. Even though the loan processing fees for acquiring of capital asset is amortized for accounting purposes over a period of time in the profit and loss account, the same in its entirety is allowable as deduction in the year of incurring such expenditure.

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