TOLA ASSOCIATES
TAX & CORPORATE ADVISORS

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TAXPAK

Newsletter by

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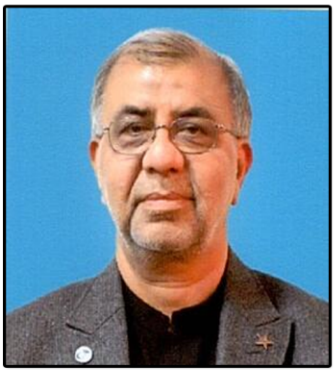
CONTENTS

Chairman's Message



Asalam-o-alaikum everyone! Hope this monthly issue of TaxPak finds you in good spirits and immaculate health! We welcome you to another edition of TaxPak, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhamdulilah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of, these developments on a monthly basis.

Moreover, we would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important Notifications and Circulars issued by the Federal Board of Revenue ("FBR") and its provincial counterparts. Moreover, Notifications from the corporate regulatory body i.e., SECP are also discussed. As our main aim is to keep the masses updated regarding the developments in the Pakistani tax law, we usually discuss a (relatively) recent judgement passed by the courts of law. This edition of TaxPak consists a discussion of two judgments recently issued by provincial High Courts of Pakistan, with regards to the challenge to the vires of Section 7E of the Income Tax Ordinance 2001 ("ITO"). One judgment was issued by the Hon'ble Peshawar High Court and the other judgment was issued by the Hon'ble Lahore High Court.

Towards the end of the newsletter, we have discussed our Topic of the month titled "Group taxation under section 59AA of the Income Tax Ordinance, 2001". The said topic provides an insight on the effect and criteria for holding and subsidiary companies to be treated as a group under the ITO.

All our readers are requested to visit our website www.tolaassociates.com , or download our mobile application in order to access previous published editions of TaxPak along with other publications, and to stay updated of future notifications. Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Warm Regards,
Ashfaq Yousuf Tola - FCA,
Chairman
Tola Associates.

FBR Sales Tax Notifications:

1. Launching of Single Sales Tax Return:

The FBR, vide Notification No. 2(54)SS(BDT-1)GST/17230R, dated 1st February 2024 launched a Single Sales Tax Return/Portal in consensus with all the provincial sales tax authorities to simplify the filing process for sales tax returns. The portal, would allow sales tax registered persons to file a single return instead of filing separate returns to FBR and different Provincial Sales Tax Authorities. This initiative will not only save time and effort, it will also minimize data entry, avoid calculation errors, and allow input tax adjustment and tax payments across sales tax authorities efficiently. It is pertinent to mention that this implementation is applicable to the telecommunications sector at the moment and shall be applicable for the sales tax returns for the tax period January 2024 for the aforesaid sector only.
For further reading: FBR

2. Amendment in Sales Tax SRO No. 1190(1)/2019:

The FBR, vide SRO 242(I)/2024, dated 23rd February 2024, made further amendments to the earlier issued Notification No. S.R.O. 1190(1)/2019 dated October 2, 2019, to include Pakistan LNG Limited (PLL) under the list of sectors excluded from Section 8B of the Sales Tax Act, 1990. Section 8B provides a maximum threshold for claiming input tax in a tax period. Section 8B also provides a list of taxpayers who are excluded from such threshold.
For further reading: FBR

Sales Tax on Services Notifications:

A. Punjab Revenue Authority ("PRA")

1. Launching of Single Sales Tax Return:

The PRA uploaded FBR's Notification No. 2(54)SS(BDT-1)GST/17230R, dated 1st February 2024 announcing the launch of the Single Sales Tax Return/Portal applicable only to the telecommunications sector at the moment. This shall be applicable for the sales tax returns for the tax period January 2024 for the aforesaid sector only.
For further reading: PRA

B. Balochistan Revenue Authority ("BRA")

1. Launching of Single Sales Tax Return:

The BRA, uploaded FBR's Notification No. 2(54)SS(BDT-1)GST/17230R, dated 1st February 2024 regarding the launch of the Single Sales Tax Return/Portal applicable only to the telecommunications sector and shall apply for the sales tax returns for the tax period January 2024. For further reading: BRA

Corporate Notification:

A. Notifications

1. Alterations in Table F to the First Schedule to the Companies Act, 2017

The SECP, vide SRO 239(I)/2024, dated 16th February 2024, issued a notification wherein alterations were made in the Table F of the First Schedule of the Companies Act, 2017 wherein in the event of dissolution of a Section 42 Company the Commissioner, FBR shall be intimated within 90 days of the dissolution. For further reading: SECP

2. Amendments to the Companies Act, 2017 for companies receiving Zakat

The SECP, vide SRO 240(I)/2024, dated 16th February 2024, issued notification whereby the SECP has directed that the Annexed Accounting standard on 'Financial statements Disclosures of Zakat Received by an Entity' shall be followed by companies that receive zakat. Further, the SECP stated that these companies are required to prepare their financial statements in conformity with financial reporting standards as applicable in Pakistan, for the preparation of financial statements for the annual reporting periods beginning on or after 1st January 2024. The accounting standard annexed to the aforesaid SRO can be found on the following link: SECP

3. Introduction of accounting standards in 'Non-Going Concern Basis of Accounting'

The SECP, vide SRO 69(I)/2024 dated 1st February 2024, issued a notification whereby accounting standards in 'Non-Going Concern Basis of Accounting' was issued for the preparation of the financial statements beginning on or after 1st January 2024.
For further reading: SECP

B. Regulations

1. Introduction of The Companies Regulations 2024

The SECP, vide SRO 210(I)/2024, dated 12th February 2024, issued the Companies Regulations, 2024 which had been earlier published in the official gazette vide notification S.R.O. 1119 (I)/2022 dated July 20, 2022 whereby, various statutory forms for filing, and regulations applicable to various types companies had been amended. For further reading: SECP

2. Amendments to the Securities Brokers (Licensing and Operations) Regulations, 2016

The SECP, vide SRO 202(I)/2024, dated 14th February 2024 issued a notification whereby amendments to the Securities Brokers (Licensing and Operations) Regulations, 2016 were made, which had earlier been published vide SRO 1787(I)/2023, dated 6th December 2023. For further reading: SECP

C. Circulars

1. Appointment of Auditors for SECP Regulated Entities

The SECP, vide Circular No. 03 of 2024, dated 6th February 2024, issued an amendment to its earlier released Circular No. 04 of 2024, dated 3rd April 2023, whereby an audit firm was included into the list of firms approved to be appointed for certain SECP regulated entities.
For further reading: SECP

2. Guidance on transfer between Revenue and Capital Reserves

The SECP, vide Circular No. 04 of 2024, dated 15th February 2024, issued guidance on transfer between Revenue and Capital Reserves whereby it clarified that the Board of directors of the company (within the extent permitted in the Articles of the company); (a) may transfer amount from revenue reserve to capital reserve, being a reserve not regarded free for distribution by way of dividend, as per the guidance provided in clause 73, Table A of the First Schedule to the Companies Act 2017; (b) The amount transferred may be utilized for issuance of bonus shares; (c) And in rare circumstances, when such capital reserve is no longer required, the amount may be transferred back to the revenue reserve, and that the Company shall disclose the same in their annual audited financial statement for each year.
For further reading: SECP

3. Clarification for the purposes of Independent Directors under the Companies Act, 2017

The SECP, vide Circular No. 05 of 2024, dated 19th February 2024, issued a clarification that no director shall be considered as an independent director, if (s)he has served on the board for more than 3 consecutive terms from the date of first appointment. However, such person may be deemed independent after a lapse of 1 term. Further, the Circular also provided clarity to the word "term"; in case of a director filling a casual vacancy for the remainder term, it shall be considered as if the director was appointed for a complete term. Moreover, companies which are not in compliance, shall comply with this and report to the Commission within 60 days of issuance of the Circular. For further reading: SECP

D. Guidelines for determination of fit and proper criteria for eligibility assessment of promoters, board of directors and chief executive officer of the Corporate Restructuring Company (CFC)

The SECP, vide Circular No. 06 of 2024, dated 6th February 2024, issued guidelines for the determination of the fit and proper criteria for eligibility assessment of promoters, board of directors and chief executive officer of the Corporate Restructuring Company (CFC) along with a specimen of the details of the requisite information and affidavit which shall be submitted along with the application for seeking approval of the Commission.
For further reading: SECP

Letters to the FBR from Tax Bar Associations across the country

Karachi Tax Bar Association:

1. ATL List for TY 2023 should include corporate taxpayers who filed their tax returns till 1st January 2024.

The KTBA, vide Letter bearing reference number KTBA/02.2024/141, dated February 01, 2024, issued a request to the FBR whereby corporate taxpayers who filed their tax returns on **1st January 2024** were requested to be included in the ATL list which will be published on March 01st, 2024, as the due date to file the income tax returns fell on a weekend i.e Sunday (31/12/23). The KTBA placed reliance on the provisions of the General Clauses Act, 1897 to strengthen their argument that the deadline to file the income tax return was automatically extended to 1st January 2024 since 31st December 2023 was a Sunday. For further reading: KTBA

SECTION 7E OF THE INCOME TAX ORDINANCE, 2001, HAS BEEN STRUCK DOWN BY THE PESHAWAR HIGH COURT

Introduction:

The Hon'ble Peshawar High Court ("PHC") was moved by Latif Hakeem ("Petitioner") against the Federation of Pakistan through its Secretary Finance ("Respondents") vide writ petition No. 5327 of 2022. The petitioner had filed challenged the vires of Section 7E of the Income Tax Ordinance, 2001 ("ITO") which was introduced through the Finance Act, 2022.

Brief Facts of the Case:

The Petitioner was aggrieved with the incorporation of Section 7E to the ITO, as per which for the tax year 2022 and onwards, a resident person, holding properties exceeding the fair market value of Rs 25 million, at the end of the tax year, subject to certain exemptions, would be deemed to have received income at an amount equal to 5% of the fair market value of capital assets located in Pakistan, which was subject to tax at the rate of 20% as specified under Division-VIII C of Part-I of the First Schedule to the ITO.
Being aggrieved of this inclusion, the Petitioner challenged the vires of the said Section 7E on three grounds:

1) First, that Parliament did not possess the legislative competency to enact Section 7E;
2) Second, that the levy of the tax in question was discriminatory; and
3) Third, that it was confiscatory in nature.

Arguments by the Counsel for the Petitioner:

The counsel for the Petitioner argued that ownership of a property was a fundamental right of every Pakistani citizen, and that the proposed legislation affected this by making non-income-producing property subject to taxation. He also placed reference on the Lahore High Court's judgment (C. P. No. 52559/2022), in which it was held that after 10th amendment to the Constitution, Parliament has no jurisdiction to tax immovable property in any form. It was also argued that no tax could be levied through a deeming provision in a Statute unless there was an event of taxation in terms of income as provided under the ITO. He further agitated that the impugned section is ultra vires the Constitution as property had been taxed, and that immoveable property cannot be taxed without realization of income from the property.

Arguments by the Counsel of Respondent:

The Deputy Attorney General and the counsel for the Respondents argued and acknowledged that immovable property could not be taxed by the Parliament after 10th Constitutional amendment, but the capital value of an asset could still be taxed through a deeming clause in terms of Entry No.47 in the Fourth Schedule of the Constitution. For this they cited the Apex Court's judgment in the M/S Elahi Cotton Mills Ltd case and the Sindh High Court's judgment in the Hakim sons (Impex) (Pvt) case.

Arguments by Amicus curiae, i.e Friend of the Court:

The court also appointed two Amicus Curiae, to assist the Hon'ble Court with regards to the said case. The Amicus Curie also argued that the immovable property had been completely ousted from the Federal Legislative Competence to tax, and after the 18th Amendment, only the province had the authority to legislate on the subject. To support their argument, they placed reference to the Articles 142 and 253 of the Constitution, and legislative debates by the Federal Minister of Law before the amendment. The Amicus Curiae also argued that tax could be imposed on income and where immovable property did not generate any income, it could not be subject to income tax through a deeming clause. They also placed further references on the Shaukat Ali Mian's case, Kesoram Industries Limited, and the Khyber Pakhtunkhwa Finance Act, 2010, which showed that after the 18th amendment, only the province could tax the capital value of immovable property.

Moreover, they argued that in Order to trigger the income tax laws, it is to be established that the subject can only be taxed to income only where there is actual income, and that what is not income under the income tax laws cannot be termed as an income through a deeming clause. The Amicus Curiae further stated that after the 18th amendment, only capital gain on immoveable property can be taxed by the Parliament, and not income arising from immovable property which post 18th Amendment fell within the province's jurisdiction for income tax purposes.

Findings of the PHC:

The PHC held that the Parliament had no jurisdiction to impose income tax on immovable property as a clear bar was provided under Entry No. 50 of the Fourth Schedule to the Constitution. Further, it held that the introduction of Section 7E of the ITO, imposed income tax on immovable property though a deeming clause, and it did not qualify the Capital Value of Assets test and was therefore, beyond the Parliament's legislative competence. The Hon'ble Court, therefore, struck down Section 7E of the ITO.

Moreover, the PHC further held that taxing immovable property and income arising from it were distinct concepts, with the former burdening the property and the latter burdening the property owner.

The PHC also reviewed the Parliamentary Debate for more insight into the legislature's intention in introducing the Section 7E of the ITO and found that the core object of the debate was the taxation of unrealized income of the immoveable property through a deeming provision which was ascertained on the basis of its fair market value. The PHC further observed that the insertion of section 7E of the ITO in the tax system aimed to tax the unrealized income of immovable property owned by a resident person. The Hon'ble PHC held that this was not permissible under the law, as per the decisions of the Apex Court in the Elahi Cotton Mills case, and the Indian Supreme Court's judgment in Harbhajan Singh Dhillon's case.

The Hon'ble PHC also held that the Parliament had the jurisdiction to tax Capital Value of Assets in terms of Entry 50 of the Fourth Schedule to the Constitution. However, it further held that Capital Value of Assets means an inseparable complete whole of the property (both moveable and immoveable). As stated above, the Hon'ble PHC has struck down Section 7E of the ITO.

CASE LAW: THE HON'BLE LAHORE HIGH COURT HAS OVERTURNED THE JUDGMENT ISSUED BY THE HON'BLE LEARNED SINGLE JUDGE AND HELD THAT SECTION 7E OF THE ITO IS NOT ULTRA VIRES THE CONSTITUTION OF PAKISTAN, 1973.

INTRODUCTION:

The Hon'ble High Court of Lahore ("LHC") was moved by the Commissioner Inland Revenue ("Appellant") versus Muhammad Osman Gul ("Respondents") in its Appellate jurisdiction against the judgment of the Learned Singh Judge with regards to tax on deemed income under Section 7E of the Income Tax Ordinance, 2001 ("ITO"). The Hon'ble Learned Single Judge had read down Section 7E, and declared the treatment of the market value of immoveable property as income under Entry 47 of the Constitution of Pakistan 1973 ("Constitution") as ultra vires the Constitution.

BRIEF FACTS OF THE CASE:

Section 7E of the ITO, was inserted by the Finance Act, 2022. Through Section 7E of the ITO, where a resident individual holds immoveable property, at the end of the tax year, having fair market value in excess of Rs 25 million in aggregate (subject to exceptions), he is deemed to generate income from the immoveable property / properties equal to 5% of the Fair market Value of the immoveable property and the said deemed income is subject to income tax at 20%. Certain exemptions have also been provided in Section 7E. A large number of taxpayers had challenged the vires of Section 7E before the Hon'ble Learned Single Judge of the Hon'ble LHC, wherein the Petitioners had contended that Section 7E was ultra vires to the Constitution of the Islamic Republic of Pakistan, 1973 and it was beyond the powers of the National Assembly to promulgate as an impost of tax.

ARGUMENTS BY THE APPELLANTS:

The Appellants contended that the learned Single Judge took an erroneous view of Entry 47 as a field of legislative competence and that tax under Section 7E was squarely covered under Entry 47 and that the decision to transpose the tax to Entry 50 by the Learned Single Judge was clearly erroneous. The Appellants discountenanced the construction put on Section 7E and asserted that despite a clear holding by the Superior Courts, the Single Judge ignored those precedents and went on to hold that tax on deemed income was unconstitutional.

ARGUMENTS BY THE LEARNED ADDITIONAL ATTORNEY GENERAL

Further, the Learned Addl. Attorney General argued that a number of taxes on income could be levied and that the Legislature was not constrained in any way to do so. The Learned addl. Attorney general further added in his submission that the purpose of Section 7E which was not only to generate revenue but also to discourage a certain set of behavior of the taxpayers.

ARGUMENTS BY THE RESPONDENT:

The Respondents contended that Section 7E was not covered by Entry 50 as the Federal Legislature could not impose capital value of assets on immovable property. Secondly, they argued that the assets which had been acquired and on which income tax had already been paid were exempt from payment of tax subsequently. Thirdly, the plea of double taxation was also taken and, in this regard, it was argued that Section 7E would be tantamount to ex-proprietary taxation.

Further, the Respondent argued that the tax was akin to one paid under Section 37 of the ITO which was capital gain tax and therefore, Section 7E suffered from the vice of double taxation.

FINDINGS OF THE LHC:

– Definition of income under the ITO, and whether deemed or notional income is covered therein:

The Hon'ble LHC stated that the term "income" had an inclusive definition under the ITO, and that the said term is used to modify the natural meaning of income. The Court further stated that the definition of income has enlarged the meaning of income to cover things that are or might not otherwise be caught.

The Hon'ble LHC further held that tax under Section 7E has been levied on notional income, and that Section 7E seeks to tax the value addition of an immoveable property not generating income in cash but capable of increment in value. It further held that *notionally the augmentation in value does become part of the taxpayer's income.*

Moreover, the Hon'ble LHC observed that through the the Finance Act, 2003 the words "any amount treated as income under any provision of this Ordinance" were added to the definition. The Hon'ble High Court then went on to hold that with the addition of these words in the term 'income', the legislature would deem any amount to be income if it has been treated as such under any provision of the ITO. It further went on to hold that it does not matter whether the amount so

treated is tangible income in the form of cash or money or rather notional or deemed income. If the legislature treats a certain amount as income then it must be held to be income for the purposes of chargeability of tax.

The Hon'ble LHC held that Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance. Furthermore, whilst interpreting the celebrated case of Ellahi Cotton Mills, the Hon'ble LHC held that the Hon'ble Supreme Court of Pakistan in Ellahi Cotton Mills clearly held deemed income as part of the word 'income' used in Entry 47 of the Constitution and that wide leeway has been given to the legislature to include notional income as income of a taxpayer and to impose tax accordingly.

The Hon'ble LHC referred to the definition of income under Section 2(29) of the ITO, and stated that an important aspect of the definition for the purposes of the case at hand was the phrase "any amount treated as income under any provision of the Ordinance" in Section 2(29) of the ITO. The Hon'ble LHC further went on to hold that the sentence "any amount treated as income under any provision of this Ordinance" has to be read as a whole. It further went on to hold that these words, when read as a whole, would convey ineluctably that the legislature may treat any amount as income and the use of word 'treated' is crucial and would connote an amount which may be deemed or imputed as income. It held that, otherwise, there was no logical basis for insertion of these words so as to confer power on the legislature to treat certain amounts as income.

The Hon'ble LHC further held that since the legislature has already defined the term "income" in the ITO, its dictionary meaning cannot be resorted to. The LHC also held that section 7E clearly refers to tax on deemed income, and that in doing so, the legislature is imposing a tax on deemed income being fully aware of the sweep of the term 'income' as used in the Constitution to include deemed income.
Moreover, the Hon'ble LHC further went on to hold that any challenge to section 7E should have been thrown out on the basis that the concept of deemed income has been recognized and upheld by the Supreme Court of Pakistan in Elahi Cotton and nothing further remains to be decided.

- Statutory interpretation; Purposive approach adopted by the Hon'ble LHC:

The Hon'ble LHC held that if the purposive approach is applied in interpreting Section 7E, the purpose was to treat as income chargeable to tax, an amount equal to five percent of the fair market value of capital assets, which the taxpayers use for increase in wealth on account of rise in value of the immovable property. It was held by the Hon'ble LHC that the accomplishment of the object of Section 7E cannot be frustrated by holding that the legislature does not have power to tax deemed income.

Further, it was held that Section 7E is a species of taxing income from property business and more appropriately labelled as property income. It further held that Section 7E belongs to the specie of provision that tax the benefit that arises from exploiting a legal interest in land and not the land itself.

– Section 7E; Covered by Entry 47 or Entry 50 of the Fourth Schedule to the Constitution?

The Hon'ble LHC went on to hold that Section 7E is a tax on deemed income, and not a tax on the capital value of asset covered under Entry 50. The Court has also overruled the reading down of Section 7E by the Hon'ble Learned Single Judge who had held that it is a tax covered under Entry 50 of the Constitution, by holding that the attempt to save Section 7E of the ITO by treating as a tax covered under Entry 50 "has no legal legs to stand upon".

Further, the Hon'ble Court held that Section 7E is simply an attempt to treat the increment in value of a capital asset as income, and that the resident person cannot be left immersed in the thought of deriving double benefit, through; one, increase in value of his capital asset and; two, zero tax. The Court further stated that in case the resident person disposes of his capital asset, no tax is leviable under Section 7E, but beyond six years, the resident person does not pay capital gain tax on such sale, too.

– The findings of the Hon'ble LHC with regards to reading down of Section 7E:

With regards to reading down a legislation, the Hon'ble LHC observed that rule of reading down is rarely applied by the courts in Pakistan. The LHC opined that "reading down" is a rule to be disapplied for countries with a written constitution. It is a concept peculiar to the U.K administration of justice which does not have a written constitution and the courts have fallen back on the rule of reading down (or reading in) to save a statutory provision or to conform it with constitutional principles. The Hon'ble LHC further went on to hold that the courts cannot use the device of reading down in order to re-write a statutory provision. It further held that there is no compulsion on the courts to save legislation and if it is beyond the legislative competence and is unconstitutional, it must be struck down and not saved.

– Double Taxation on the income of the taxpayer vide Section 7E and Section 37 of the ITO?

The arguments with regards to double taxation was rebutted by the LHC by observing that Section 7E concerns with tax on income whereas section 37 is a tax on capital gains; and income is either

earned or deemed to be earned from various sources during the tax year regardless of sale or disposal of any asset whereas tax on capital gains is a tax on profits arising from eventual sale/ disposal of an asset.

The Hon'ble LHC, whilst referring to the illustrations provided for in a Note submitted before the Hon'ble LHC by one of the Advocates for the Appellants, held that incidence of tax in respect of both sections 7E and 37 of the Ordinance are distinct and separate and are triggered under different circumstances. It further held that there is no duplication in the imposition of taxes under Section 7E and 37 and the question of double taxation does not arise.

- **The findings of the Hon'ble LHC with regards to discrimination under Section 7E.**

The Hon'ble LHC held that Section 7E(2)(d) (i) to (iv) are not discriminatory as it carves out categories of persons distinct and apart from the category of general taxpayers.

Topic of the Month: Group taxation under section 59AA

Introduction

Group taxation is a scheme introduced through the Finance Act, 2007 whereby a holding company and its subsidiaries would be taxed as one single unit, only if the holding company holds 100% shares in the subsidiaries.

Definitions as per the Income Tax Rules, 2002 ("ITR"):

A. ***Subsidiary Company: (Rule 231D (1))***
   A company which is 100% owned by another.

B. ***Holding Company: (Rule 231D (1))***
   A company owning all equity shares of the subsidiary except those held by the nominees.

Income Tax Ordinance 2001

The option for Group Taxation is exercisable only to companies which are locally incorporated under the Companies Act, 2017 and duly comply with the corporate governance requirements and rules/ regulations as specified by the Securities and Exchange Commission of Pakistan ("SECP").

Exercising this option would mean that all the companies in the group would be treated as one fiscal unit and this shall be irrevocable. However, this relief would not be exercisable to losses or unabsorbed depreciation of subsidiaries before formation of the group. For instance, if a subsidiary (Company B) had losses in tax year 2021 and the holding company along with company B opted for group taxation for the tax year 2022, the losses of Company B would not be taken into consideration as it had incurred before opting for Group Taxation under Section 59AA.

Income tax Rules 2002

Furthermore, vide SRO 392(I)/2009 dated 19th May 2009 Rule 231D, being the procedure for group taxation under section 59AA, was introduced into the Income Tax Rules, 2002 ("said Rules"). The Rules also prescribed that the holding company and each subsidiary shall make a separate application containing declarations of their desire to exercise an irrevocable option to be treated as a signal fiscal unit to the concerned Commissioner in the prescribed manner within the 1st quarter of the tax year for which group taxation is opted for.

Furthermore, these applications will be signed by the respective Chief Executive Officers of the subsidiary and holding company and shall be addressed to their respective Commissioners. Along with this, a certificate duly issued by the SECP shall be accompanied verifying that the company has complied with the Code of Corporate Governance. As for the accounting period of the companies, the accounting period for all companies opting under this relief shall be the same. Further, transactions conducted by any company within the group and with its associated companies, shall be carried out and recorded on an arm's length basis, meaning, the transactions between the holding and the subsidiary and vice versa, must be done independently without one influencing the other.

Furthermore, tax matters applying to period prior to adoption under section 59AA, shall continue to be dealt with the Commissioner having jurisdiction over the subsidiary. It is pertinent to mention that all provisions, including withholding provisions under the ITO, applicable on a holding company, shall also be applicable on the subsidiaries for the period during which they opt for Group taxation. Further, each company within the group is obliged to file independent withholding statements as required under the ITO.

If there is a divestment of a subsidiary company, for instance the holding company has disposed its shares from the subsidiary, provision for group taxation shall cease to exist and no effect shall be taken for group taxation during the year of disposal.

Procedure For Tax Return:

Holding Company:

The return for the tax year following the option for group taxation shall be prepared as one fiscal unit under the name of the holding company and the tax liability will be discharged/ refund shall be claimed as if the business of the subsidiaries were the business of the holding company. Also, the holding company's return shall be accompanied with the income tax return and copies of audited accounts of each company.

It is reiterated that losses incurred prior to exercising this option will not be considered.

Subsidiary Companies:

Subsidiary companies shall furnish their returns of income in their respective tax jurisdictions along with a copy of the application for group taxation for record and future adjustments and intimate non-taxability of the returned income. The subsidiaries shall also intimate their respective Commissioners having jurisdiction over them regarding their option for group taxation.

Exemptions Available for Groups

Group companies shall also be entitled to certain exemptions such as, dividend income derived within the group shall be exempt from tax, as per clause 103A, Part I of the Second Schedule of the ITO, i.e. if the holding company receives a dividend from its subsidiary, the dividend income itself would not be taxable. However, this exemption shall apply only if the return of the group has been filed for that tax year.

Secondly, as per clauses 11B and 11C in Part IV of the Second Schedule of the ITO, provisions with respect to withholding of taxes for dividends and profits on debt won't be applicable to inter corporate dividends or inter corporate profit on debt of group companies provided that they have filed the group return for the latest completed tax year.

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