

Paper-6
Advanced Tax Laws and Practice
(Part- A)

Chapter-2

Dec - 2012 [1] (a)

Section 115JAA provides that where tax is paid by a company for any assessment year in relation to deemed income under section 115JA(1) or 115JB(1), a tax credit will be allowed in subsequent years.

However, newly inserted section 115JAA(7) w.e.f. 1.04.2011, Assessment year 2011-12 and onwards, provides that in case of conversion of a private company or unlisted public company into a Limited Liability Partnership, 2008, the provisions of Section 115JAA shall not apply to the successor or LLP, that is to say tax credit will not be allowed to such LLP.

Chapter- 3

Dec - 2012 [1] (b)

Transfer of capital asset or intangible asset by a private limited company or a non-listed company to LLP shall not be regarded as a transfer. Correspondently, any transfer of a share or shares held in a company by a shareholder shall also not be treated as a transfer on conversion of the above company to a LLP [Section 47 (xiib)].

The Act has inserted Clause (xiib) to section 47 to provide that-

- (a) the transfer of a capital asset or intangible asset by a private limited company or a unlisted company, or
- (b) any transfer of a share or shares hold in the company by a shareholders.

On conversion of a private limited company or an unlisted company to LLP in accordance with section 56 and section 57 of the LLP Act, 2008 shall not be regarded as a transfer for the purposes of capital gains tax under section 45, subject to certain conditions. These conditions are as follows:

- (a) All the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP.
- (b) All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion.
- (c) The shareholders of the company do not receive any consideration or benefits, directly or indirectly, in any form or manner, other than by way of share in profits and capital contribution in the LLP.
- (d) The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion.

- (e) The total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed ₹60,00,000; and
- (f) No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion.

Chapter- 3

Dec - 2012 [1] (c) (i)

As per explanation 5 of Section 32 (1) of the Income Tax Act, 1961, depreciation will be allowed, if due, by the Assessing Officer, even when it was not claimed by the assessee and compute the total income accordingly.

Chapter- 3

Dec - 2012 [1] (c) (ii)

Both the basic conditions regarding allowability of depreciation Under section 32 (1) are satisfied namely about ownership and its use, therefore, both the companies are eligible to claim depreciation in the same fractional value of assets i.e., in the proportion 80% & 20%.

Chapter- 3

Dec - 2012 [1] (c) (iii)

X Ltd. will be eligible for depreciation allowance Under section 32 (1), inspite of non-fulfillment of condition of its use. In case of assets acquired for the business and kept, 'stand by' tantamount 'passive' use and hence entitled for eligible depreciation.

Chapter- 4

Dec - 2012 [2] (a)

According to section 139 (3) read with section 80, if a person has sustained a loss under the head " Profit and gains of business or profession" or under the head "capital Gains" and claims that such loss or any part thereof should be carried forward Under section 72 or section 73 or section 74 or section 74A then he may furnish a return of loss within the time prescribed Under section 139 (1) and all the provisions of this Act shall apply as if it were a return Under section 139 (1).

It is not mandatory to file a return of a loss (except in case of a company or a firm) as there is no taxable income. However, under section 80, losses under the head business or profession and capital gain can not be carried forward unless the return of loss is submitted on or before the due date mentioned under section 139 (1) and it is duly assessed. If the return of loss is not submitted or is submitted after the due date, such losses cannot be carried forward.

Thus, in the given case, it is clear that the assessee has not filed the return of loss voluntarily within the time allowed under section 139 (1). Therefore, the assessee will not be in a position to carry forward the business loss by virtue of the specific provisions of section 80.

However, the assessee will be in a position to carry forward the unabsorbed depreciation as per section 32 (2).

Chapter- 2

Dec - 2012 [2] (b)

Companies liable to pay tax on the basis of MAT under section 115JB are required to pay advance tax and interest under sections 234B and 234C is payable on failure to pay such advance tax. [JCIT v Rolta India Ltd. (2011)]

For the purpose of computing interest chargeable under section 234A, 234B and 234C, credit of MAT under section 115JAA has to be set off against the assessed tax payable. [CIT v Tulsian NEC Ltd. (2011)]

Chapter- 2

Dec - 2012 [3] (a)

According to section 115-0, the domestic company shall, in addition to the income tax chargeable in respect of its total income, be liable to pay additional income tax on any amount declared, distributed, or paid by such company by way of dividend (whether interim or otherwise), whether out of current or accumulated profits such additional income tax shall be payable @ 15% plus surcharge plus education and secondary and higher education cess. Such tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients. As per section 10 (34), any income by way of dividends referred to in section 115-0 shall be exempt from income tax. However, this provision resulted in a cascading effect in the case of holding company declaring dividend out of dividend received from its subsidiary.

To mitigate cascading effect of DDT, section 115-0 (1A) of the Act provides that dividend liable for DDT in case of a company is to be reduced by an amount of dividend received from its subsidiary after payment of DDT if the following conditions are satisfied:

- (i) the amount of dividend is received from its subsidiary;
- (ii) the subsidiary has paid tax under this section on such dividend; and
- (iii) the domestic company (holding company) is not a subsidiary of any other company.

For Example:

A Ltd. holds 65% shares in B Ltd. A Ltd. received 40,00,000 dividend from B Ltd. A Ltd. declares Final Dividend of ₹ 80,00,000 to its shareholders. A Ltd. shall be liable to pay DDT of ₹ 12,97,800 @ 16.2225% on full amount of ₹ 80,00,000 including the amount received from B Ltd. Due to this the amount of ₹ 40,00,000 is taxed twice once in the hands of B Ltd. and secondly in the hands of A Ltd.

Thus, to mitigate the cascading effect of above said DDT, A Ltd. shall be liable to pay DDT on ₹ 40,00,000 (₹ 80,00,000 - ₹ 40,00,000) @ 16.2225% of ₹ 6,48,900.

Chapter- 4

Dec - 2012 [3] (b) (i)

As per section 254 (2), the Appellate Tribunal may, at any time within 4 years from the date of the order, with a view to rectify any mistake apparent from record, amend any order passed by it under section 254 (1), and shall make such amendment if the mistake is brought to its notice by the assessee or Assessing Officer. Thus, above said Tribunal has the power to recall its order in entirely as per section 254 (2).

Chapter- 3

Dec - 2012 [3] (b) (ii)

The Tribunal can pass an order of stay only for a period not exceeding 180 days from the date of such order. If appeal is not disposed of within 180 days and the delay is not attributable to the assessee, the period of stay may be extended. The total period of initial stay and extended period(s) can not be more than 365 days. If appeal is not disposed of within the extended period(s), the order of stay shall stand vacated after the expiry of such period section 254 (2A). Thus, the Tribunal cannot grant indefinite stay in any proceeding relating to an appeal.

Chapter- 3

Dec - 2012 [3] (c)

The statement is False.

A company incorporated outside India i.e. a foreign company is liable for wealth-tax in India in respect of net wealth situated in India and if its residential status will be of resident as per Income Tax Act, 1961.

(Part- B)

Chapter- 14

Dec - 2012 [4] (a) (i), (ii), (iii), (iv), (v)

- (i) (c) Five Years
- (ii) (c) Self-assessment made by the assessee and provisional assessment under Rule 7.
- (iii) (c) Three months
- (iv) (c) 50,000
- (v) (b) 10,000

Chapter- 14

Dec - 2012 [4] (b) (i), (ii), (iii), (iv), (v)

- (i) Finance Act, 1994
- (ii) 90
- (iii) Evidence
- (iv) 10
- (v) Residual Method

Chapter- 6

Dec - 2012 [4] (c)

As per proviso to Cenvat Credit rule 3 (4) states that only Cenvat Credit available as on last day of the month can be utilized for payment of duty even if duty is payable by 5th/ 6th of the following month/ quarter. Thus, Cenvat Credit in respect of inputs/ capital goods/ input services received after end of the month cannot be utilized while paying duty on 5th/ 6th as the case may be. That credit can be utilized in any subsequent month only.

Hence, in the given case, the Star Manufacturing Ltd. cannot pay such amount of duty in July 2012 out of the Cenvat Credit taken in the months of June and July, 2012.

Chapter- 6

Dec - 2012 [4] (d)

Motor vehicles are now included in the definition of capital goods under Rule 2 (a) (viii) of the Cenvat Credit Rules, 2004.

As per Rule 2 (a) (viii), Motor vehicles other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis, (but including dumper and trippers) used:

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliances used in an office; or
(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory (w.e.f. 01-04-2011). or
- (2) For providing output service. Thus, Cenvat Credit of duty paid on motor vehicle is now available to a manufacturer as capital goods used in the factory of the manufacturer of the final products.

Chapter- 6

Dec - 2012 [5] (a)

No, the assessee's contention is not valid in law. The facts of the given case are similar to the case of Usha Rectifier Corp. v CCE (2011). Supreme Court held that, statement in Balance Sheet established that testing equipment was fabricated in the company and capitalized. This was also mentioned in Board of Director's Report. Statement confirmed that equipment was marketable. As per rule 9, goods are 'deemed to have been removed'. Hence, excise duty is payable.

Thus, the duty is payable by superb Electronics Ltd. on such testing equipments as these are liable to excise duty.

Chapter- 7

Dec - 2012 [5] (b)

Demand made by the Department is not tenable in law. The facts of the present case are similar to the case of CCE v. Lanco Kondapalli Power Pvt. Ltd.(2011). The Court held that the goods were irretrievably lost and were not available for the purpose for which they were imported. Merely because the goods were not destroyed in the presence of the customs officers, that would not disentitle the goods from the project import rate of duty under heading 9801 of the Customs Tariff. Hence Sun Power Ltd. is entitled to pay duty at concessional rate under the Project Import Regulation.

Chapter- 6**Dec - 2012 [5] (c)**

Yes, the CESTAT's order of rectification is bad in law. The facts of the present case are similar to the case of CIT v. Hero Cycles AIR 1998. The Apex Court held that rectification is possible only when a glaring mistake of fact or law has been made. Rectification is not possible if the question is debatable.

Chapter- 6**Dec - 2012 [6] (a)****Computation of Assessable Value**

- (1) Direct material consumed(net of excise duty)