

Chandigarh, Wednesday, January 22, 2003

Query: Ours is an employees union and we have come out with a souvenir in December 2002 to commemorate its 10th year celebration, We have collected advertisements from various businessmen and finally made a surplus of Rs 3 lakh. Is the excess of income over expenditure a taxable income? We are a registered charitable association,

Opinion: It is a common practice to come out with souvenir to symbolize the achievement of an association or an organization, However, the excess of income over expenditure on the celebration will not be viewed as trade or as adventure in the nature of trade, A charitable institution when carries on an activity by publishing a souvenir the excess arising thereon is not chargeable to tax as held in CIT v. S,RM.T. Staff Association (1996) 221 ITR 234 (AP). Also, it is not a regular publication carried out for making an income nor the publication is a regular activity of the association, Also refer Automobile Association of Bengal v CIT (1968) 69 ITR 878 (Cal) , In view of the fact that your union has published a souvenir to commemorate its 10th year, it cannot be burdened with tax liability even though it has made surplus by publishing the souvenir,

Foreign Travel Expenses

Query: I am an exporter with head office in Chandigarh, This year I visited New Zealand to explore the possibilities of exporting my products to that country but the attempt proved futile, Will I be allowed to claim the expenses while computing my income?

Opinion: Where the expenditure is incurred for expanding a business already in existence then such expenditure is deductible whether or not such expansion takes place as held In CIT v, Alembic Glass Industries Ltd, (1976) 103 ITR 715 (Cui),

In CIT v. Coromandel Fertilizers (2001) 247 ITR 417 (AP), expenditure incurred on techno-economic feasibility studies for identifying projects that could be taken up in future was held as allowable expenditure even though no new line of business was done by the assessee based on the study,

Though travel expenditure was incurred for expansion of business which ended abortive yet the character of expenditure will not change and it shall be allowed to be deducted as business expense.

Please remember that if the business proposed is different from the existing business then the expenditure is not allowable under section 37(1),

Purchase of Carpet - Deductibility

Query: I have got my office carpeted wall to wall, Please advise whether the cost of carpet shall be allowed to be claimed as total expense or I shall claim depreciation?

Opinion: Though no depreciation is specifically allowed in respect of office carpet, an assessee purchasing a carpet will have to amortise the cost of asset during its useful life time in Harijan Avam Mirbal Varg Avas Nigam v. CIT (1996) 218 acres of land in the outskirts of ITR 622 (All), it was held that an assessee can claim the cost of the carpet on deferred basis taking into account its useful life.

Discontinuance of Profession

Query: I was a practicing Chartered Accountant and recently got appointment in the Indian Administrative Services. I have surrendered my certificate of practice recently. The fees outstanding on the date of closing down my practice amounts to Rs 4 lakh. If I receive the fees now, will it be taxable? What happens if I make a sale of goodwill to another CA.?

Opinion: Under section 176(4), any sum received after discontinuance will be deemed as the income of the recipient and chargeable to tax in the year of receipt as if no such discontinuance had taken place. The receipt hence will be chargeable to tax.

If you opt to make a sale of your profession by taking Rs 4lakh, there will not be any tax liability as the Section 55(2) (a) says that the cost of self-generated goodwill of a business as 'nil' and the absence of the word 'profession' will bail you out.

Case law reference: V. Parthasarathy v. Addl. CIT (1976) 103 ITR 508 (AP) Nalinikant Ambalal Modi v. S.A.L. Narayan Row (1966) 61 ITR 428 (SC)

Solatium Receipt: Capital Gain?

Query: I am a Doctor and had two acres of land in the outskirts of Mohali. The land was subject to compulsory acquisition by the government. I have received market value of the asset plus 5% of the market value as solatium. Will the solatium received under the Land Acquisition Act be added into the consideration obtained upon transfer. And will it be subject to capital gains or taxable as other income?

Opinion: Though it is a fact that Section 48 uses the word consideration as the prime criteria for the purpose of reckoning the capital gain, the solatium received is nothing but a compensation given to the assessee upon compulsory acquisition by the acquiring authority. Further Section 45 of the Act says that any profit and gain arising from the transfer of capital asset is chargeable to tax only as capital gain. Though the expression 'solatium' is not found in Section 48 yet, a sum received upon transfer of capital asset falls within the boundary described in Section 45.

A similar issue was discussed by the Bombay High Court in the case of RR Todiwalla v. CIT (1994) 208 ITR 65 (Rom) wherein the court held that the solatium received is an amount received in compensation and the receipt arises as a result of transfer. The court hence held that it has to be taken for computing the capital gains.

In view of the above, the solatium received by you is chargeable to tax by including the sum as consideration arising upon compulsory acquisition of your land.