

## Chandigarh, Wednesday, December 25, 2003

**If the amount collected in the name of the name of the charity is not spent for charitable purposes then it will not be eligible for tax exemption**

*My father was carrying on business in the name of M/s. Groversons & co. till 24.11.2002. He died on 25.11.2002 and I took over his business. My income for this is year would be around Rs 1,00,000. A debtor to whom my father supplied goods k in 1995 has paid Rs 50,000 in final settlement of due after the death of my father. My father had claimed this debt as a bad debt in the year 1996-97 (Assessment Year). Please advise whether the amount is chargeable to tax. Can I set off the recovered amount against my brought forward losses of previous years?*

Where an assessee obtains an allowance or deduction in an assessment year towards loss expenditure or trading liability and in a subsequent year obtains some benefits, the value of such benefit is chargeable to tax in the year of receipt {section 41 (1)}. Even if the business in which the loss or expenditure was claimed has been discontinued the subsequent benefit will be chargeable to tax in the year of receipt. If a successor obtains a benefit which was claimed by the predecessor (as an expenditure or as a loss) then the successor is chargeable to tax in the year of receipt of such benefit. The benefit can be either in cash or in any other manner [section 41 (1)(b)]. The successor would include in the case of amalgamation the new amalgamated company, in the case of firm by the new firm and in the case of demerger, the resulting company. In respect of individuals, the person taking over the business. Hence the amount recovered by the successor (you) is chargeable to tax in the same manner as the assessee (your father) who claimed the deduction would have been chargeable to tax if he had continued the business in the year of recovery. Hence the bad debt recovered by you is liable to tax. You can claim set off of deemed incomes under section 41 (1) against brought forward losses.

(CIT v. Ardee Mechanical Industries (P) Ltd. (2001) 20 DTC 547 (Del- HC) .. (2001) 247 ITR 87 (Del). I am assuming that the brought forward losses you are referring to are assessed losses.

*Ours is an event management company. We formed a trust to help the Kargil war widows and soldiers through collecting funds and helping them in permissible ways. After having organized a big function where cash was given to the identified war widows, a balance amount of Rs 1,00,000 was still left with us?*

*We gave this money in the form of a cheque to the HQWC, Chandimandir. Please advise if there exists any income tax liability?*

The Supreme Court in CIT v. Bijli Cotton Mills (P) Ltd. (1979) 116 ITR 60 (SC) has held that where the amounts collected as charity are kept in separate account and utilized for charitable purposes then that amount is not to be included in the income of the assessee. However, if the amount collected in the name of the charity were neither meant for any charitable purposes nor spent on charitable purposes then it will not be eligible for exemption from tax as held in CIT v. Amritsar Transport Co. (P) Ltd (1993) 201 ITR 816 (SC).

In your case you formed a trust for specific purpose and then collected sums towards charity and have spent a part of the amount towards charity and the balance have been handed over to the HQWC, Chandimandir, for needful disbursement. There is no income tax liability.

*I and my brother do business under the name of separate firms. During the year, both the firms lent money to each other at 15% interest. My firm lent Rs.5.50 lakh to my brother's firm and his firm lent Rs3.30 lakh to my firm. As per my accountant who is a B. Com, my firm may deduct TDS on the difference amount of Rs 2.20 lakh. Please advise whether TDS is on gross interest or on net interest?*

Both the firms should deduct tax at source on the amounts credited in the account of the payee and the netting of payments will not be in accordance with law. Section 194A says that "any income by way of interest" which means all interest income. A person when has credited the account of the payee, immediately the liability to deduct tax at source will arise. An assessee cannot shirk the liability imposed by the statute by deducting tax on the net interest after mutual set off of the interest expenditure. (CIT v. S.K. Sundararamaier & Sons (2000) 14 DTC 710 (Mad HC)(SN); (1999) 240 ITR 740 (Mad). However, if ad hoc payments are made between the parties without debiting or crediting interest in the books and the correct interest is ascertained at the end of the year, the decision perhaps may be different.