Latest Direct Tax Updates from Supreme Court/ Delhi High Court

Name of the case	***Issue for Consideration (Gist)***	***Principle Emerging/Ratio/Proposition flowing (Detail)***
Yum Restaurants	***Ist Issue*** ***Crystallization of Expense / Accrual of Liability*** (here marketing incentive in form of reimbursement of expenses including/covering period pertaining to subject assessment year, *provided for* in subject asst year, albeit incentive scheme for the same was communicated to dealers/franchisees in subsequent assessment year *(Held Liability **not** crystallized/accrued in subject year and pertains to subsequent year when incentive scheme was communicated to concerned dealers)* (***Read in light of earlier/latest DHC ruling in Insilco)*** ***IInd Issue*** ***Provision of Advertisement Expenses*** : In form of	***Ist Issue*** "Thereafter the assessee-company in order to incentivise in development of Pizza Hut brand in India at an accelerated pace formulated a scheme in April, 2001, whereby it offered to reimburse contributions made towards advertisement to the extent of 2% of the sales of the franchisees outlets for the period 01.12.2000 to 30.11.2001 provided they commenced construction or operations/business at or from three additional outlets by 30.11.2001. In this background it is quite clear that the incentive scheme came to the knowledge of the franchisees only in April, 2001, therefore, the assessee's claim with respect to accrued marketing expenditure amounting to Rs 27,61,882/- in our view, was not sustainable in the financial year ending on 31.03.2001. The assessee-company could not have in the assessment year under consideration predicted the liability on this account when the scheme came to be formulated only in April, 2001." ***IInd Issue*** "The point to be noted is that what the assessee-company in law could not have claimed directly, that

	contribution to intermediate wholly owned subsidiary company: Whether business purpose and section 37 fulfilled? (DHC affirmed ITAT conclusion as to: "In so far as the second issue is concerned the Tribunal came to the conclusion, upon reading of the tripartite agreement, particularly, clause 4.1, that the payment made under it to its wholly owned subsidiary, that is, YRMPL was purely ***voluntary***. It further observed that there was ***no demonstrable expediency and nor was the assessee-company able to show how the said contribution had benefited its business***. It also noted that the Assessing Officer had found as a matter of fact that out of the total contribution of Rs 2.64 crores received by YRMPL Rs 2.19 crores had been spent which had been allowed to the subsidiary. Thus keeping these facts in mind the Tribunal came to the conclusion that the said excess amount had to be disallowed in view of the assessee's failure to prove that contribution had been paid by the assessee-company in the course of carrying on its business or for reasons of commercial expediency" ***(Refer DHC earlier ruling in Microsoft case)***	is, by making a provision for advertising expenditure could it then be allowed to claim an amount as an expense merely on account of the fact that it had set up an intermediary in the form of a wholly owned subsidiary. In our opinion as rightly held by the authorities below, it cannot be so. For any expenditure to be permitted as deduction under Section 37(1) of the Act the twin conditions which are required to be fulfilled are that the expenditure in issue should not be of a capital nature, and that, it should have been expended wholly for the purposes of business. It is well-settled that the expression „for the purposes of business" in Section 37 of the Act has been held to mean an expenditure which is voluntary in nature and commercially expedient. In the present case the Tribunal has returned a finding of fact that the assessee-company has not been able to prove that the contributions to the subsidiary were made in the course of business or on account of commercial expediency."
K.J.Business Centre	***Ist Issue*** ***Allowability of Commission Expense*** (DHC has held that commission to distant related parties cannot be *ipso facto* disallowed, especially when same is paid to corporate entities, which faces higher tax incidence)	***Ist Issue*** "The additions of Rupees 28,50,000/- and Rupees 30,00,000/- paid by AIFACS to Competent Holding (P) Ltd. and SMC Food Ltd. aggregating Rupees 58,50,000/- were deleted by the CIT(A). After duly noting the constitution of ownership of Manik

	IInd Issue ***Consistency and Tax Matters*** (applied consistency to allow the issue in favor of assessee that is if some claim is admitted in one case, same cannot be disallowed in another case - ***Read in light of earlier DHC ruling in USHA INDIA Ltd.***) ***IIIrd Issue*** ***Business Practice of Spreading over the income***	Enterprises (P) Ltd., and the aspect of lifting of corporate veil, the CIT(A) deleted the addition of Rupees 51,75,000/- made by the Assessing Officer. It was also highlighted by the CIT(A) that a company has to bear a higher incidence of tax and, therefore, it would be of no advantage to the Assessee to share the commission and thereby eventually subject itself to a higher taxation. The addition of commission of Rupees 2,00,000/- and Rupees 1,84,000/- to M/s. Achha & Associates and M/s. Chetan Investment & Marketing Services respectively were also deleted. However, the addition of commission of Rupees 8,09,375/- paid by the Assessee to M/s. Trehan Estate Agency was sustained since the CIT(A) considered this to be without consideration and justification. The Tribunal has upset this finding primarily for the reason that payment had not been returned by M/s. Trehan Estate Agency to the Assessee and the fact that there was a distant relationship between them was insufficient reason to disallow the said amount. It is clear that the factual matrix was carefully considered by the CIT(A) as well as the ITAT, calling for no further consideration on our part. The ITAT has observed that the conclusion of the Assessing Officer to the effect that the commission had been distributed to different parties by the Assessee was not based on any material on record." ***IInd Issue*** "…applying the principle of consistency we decline to interfere in the facts and circumstances of the present case. In Union of India -vs- Kaumudini Narayan Dalal, [2001] 249 ITR 219 and Union of India –vs- Satish Panalal Shah, [2001] 249 ITR 221 their Lordships have opined that ***it is not permissible for the Revenue to***

<table>
<tr>
<td></td>
<td>to number of years
(DHC Highlighted that precedents under Income Tax Law do not support spread over of income)

<u>IVth issue</u>

Written clause in agreement and Claim in Income Tax Proceedings
(DHC has highlighted that written clause is must in written agreement for supporting/claiming tax expense on important matter)
<u>Read in light of earlier Patna High Court ruling in Jamshedpur Motor Association - holding no written agreement required for claiming tax expense - not referred in instant ruling)</u>
-</td>
<td><u>accept a legal proposition in the case of one assessee and assail in the case of another…</u>"

<u>IIIrd Issue</u>

DHC on basis of number of precedents has doubted the ITAT conclusion as to spreading over of lease income on basis of trade practice by observing that
a) there is no such practice in the trade
b) as per precedents available, it is apparent that entire income has to be taxed in one go
<u>However, interestingly after expressing its doubts with specific reference to SC rulings, DHC has declined to give a final answer on the important issue pleading/relying upon the principle of consistency.</u>

<u>IVth issue</u>

"We also find it difficult to accept the reasoning of the Tribunal that an oral statement to the effect that it was understood between the parties concerned that commission would be refundable if the Lease was terminated before stipulated tenure, must be accepted even in the absence of a written covenant to this effect.
<u>Such terms are of such far-reaching import that its absence in the relevant document could only be indicative of the falsity of the claim.:</u>

Therefore utmost care is required while drafting important business agreements, specifically keeping tax angle in mind.</td>
</tr>
<tr>
<td>Supreme Court on Section 14A</td>
<td><u>Relevant Observations of SC:</u></td>
<td><u>Potential Impact:</u></td>
</tr>
</table>

taking cognizance of conflict of opinions and issuing Notice on revenue's SLP in **PSBL Industrial Finance Ltd.**	"Issue notice as to why the matter should not be remitted to the High Court particularly when an important question of law arises. ***It may be noted that there is conflict of opinions on the interpretation of Section 14-A of the Income Tax Act.*** Dasti granted."	Since SC has CATEGORICALLY observed on **2/4/2009** that there are conflict of opinions on interpretation and scope of section 14A, same may be **authoritatively relied to plead that till today issue is at nascent stage**, and no concealment penalty CAN BE leviable if the addition made u/s 14A is accepted/affirmed on merits. **(Refer SC ruling in ELI LILY & SC in AMIT BISHNOI)**