Interest paid on Capital Borrowed Outside India for Overseas Investment NOT exigible to tax in India – Assessee eligible for Refund of TDS: Delhi HC

In the recent ruling of ***Sun Pharmaceuticals***[1]**, the Delhi High Court** has decided the issue of taxability of interest paid by an Indian Company on capital borrowed outside India for the purpose of overseas investment(s) holding that the same is covered by the exclusion u/s 9(1)(v)(b), thereby, not attracting TDS liability u/s 195 of the Income Tax Act, 1961 ('the Act').

Brief Facts & Issue before the Court

- The assessee, an Indian company, borrowed capital from outside India through Bonds and ECB, to globally expand its business by way of equity infusion in its overseas subsidiaries;

- Despite the payment of interest/ premium not being exigible to tax in India u/s 9(1)(v)(b), the assessee remitted the amounts after deducting and depositing TDS (after grossing up) u/s 195 and, thereafter, claimed refund of such excess taxes, by way of filing revised TDS returns, and application(s) before the AO.

- The AO, however, rejected the claim for refund, inter alia, reasoning that – (a) the revised return and application was filed beyond the limitation of 2 years, as stipulated under *paragraph 9 of CBDT Circular No.7 dtd. 23.10.2007*; and, (b) the case of the assessee does not fall under the exclusion(s) provided u/s 9(1)(v)(b) of the Act.

On behalf of the assessee, it was urged that – (i) *paragraph 9 of the CBDT Circular No.7/2007* prescribing limitation of 2 years for filing application for refund of excess taxes wrongly/ mistakenly deposited is ultra vires the provisions of the Act; and (ii) the equity infusion in overseas subsidiaries was for advancing the global business, which was "commercially expedient" and constituted a "source outside India", and thus, the interest/ premium paid on capital borrowed outside India qualified for exclusions u/s 9(1)(v)(b) – accordingly, since the same was not chargeable to tax in India, no tax was liable to be withheld thereon u/s 195, and the excess TDS deducted and deposited by assessee after grossing-up was liable to be refunded to the assessee who had borne the liability for tax.

Reasoning and Conclusion

The High Court allowed the writ petition, granting the relief to the assessee, holding that:

The limitation of 2 years stipulated under Paragraph 9 of the Circular No.7/2007 is ultra vires the provisions of the Act, *since*:

a. The authority u/s 119 empowers the CBDT to relax or enlarge a period or requirement prescribed under the Act, as opposed to imposing/ introducing a restriction or constricting a period within which a right may be exercised;

[1] ***Sun Pharmaceuticals Industries Ltd. vs. ITO*** **2025:DHC:564-DB**

b. Sections 237 and 239 do not prescribe any limitation for seeking refund, which indicated the legislative intent not to create an embargo of limitation on legitimate refund claims under the Act, unlike other fiscal statutes, which provide specific limitation periods;

c. The prescription of limitation, being a legislative/ substantive act, could not be exercised by the CBDT u/s 119, which is couched in permissive and not restrictive language.

The assessee was entitled to refund of excess taxes deducted and deposited (after grossing-up) on overseas remittance of interest/ premium outside India, *since:*

d. The capital was borrowed to aid the global business of the assessee, constituting a **"source"** outside India, and no part of such investments were either routed to or utilized in India;

e. The holding company had an enduring interest in the business of a related entity, and thus, any advances made or liabilities taken qualified the test of "commercial expediency";

f. The expected "source" of income as a result of capital infusion by the assessee would arise from business activities of the overseas related entity outside India – thus, the interest/ premium remitted by assessee on borrowed capital was incurred *for the purpose of a business carried on outside India* and/ or *for earning income from a source outside India*, thereby, qualifying for the exclusion u/s 9(1)(v)(b), not being taxable in India, and not attracting TDS liability u/s 195 of the Act.

The case was represented by **Mr. Ajay Vohra, Sr. Advocate,** instructed and assisted by the team of ***Vaish Associates Advocates,*** comprising of **Mr. Rohit Jain, Mr. Aniket D. Agrawal,** and **Mr. Abhisek Singhvi, advocates.**

VA Comments

The ruling of the High Court represents an important milestone in the march of law on the growing judicial trend of according a favourable view of legitimate refund claims, not being bound by technicalities. Additionally, the ruling has outlined the contours of the power vested in the CBDT u/s 119 of the Act in relation to formulating subordinate legislation, emphasising that such power is aimed at relaxing the period or requirement otherwise stipulated under the Act, with an objective to alleviate the difficulty caused to taxpayers.

The High Court, in a first, has interpreted the provisions of section 9(1)(v)(b), to conclude that the test of "commercial expediency" would be equally relevant to determine the business purpose for which the borrowed capital is used, in particular, including the investment or capital infusion made by a holding company in an overseas subsidiary; the High Court also clarified as to what would constitute the "source" of income for the purposes of section 9(1)(v)(b) of the Act.

For any further information / clarification, please feel free to write to:

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