

## TAX HURDLES IN HORSE RACING

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### Introduction :

Like any other law, Income Tax Act also has a few provisions which stand in the way of some sections of business organisations such as Race Clubs. Such provisions of the Act are really hurdles in carrying on the business of horse racing in India. Such hurdles and hardships will have an impact on collections, club commission and govt. taxes. Let us now understand how all such provisions stand in the way of racing business, and the remedy available.

### Reduction and omission of the Basic exemption limit :

U/s10(3) of the Income Tax Act, the exemption limit in respect of the winnings from horse races has been reduced to Rs.2500 and later this Sec10(3) has been totally omitted w.e.f 1-4-2003. Consequent to this omission, any winning from horse races is taxable fully without any exemption; the punters' take-home money has been cut and the reinvestment by the punters has reduced. As a result, the race clubs lost commission and the state govts' betting tax collections decreased. That is the negative impact of such omission.

There is no valid reason for not restoring and increasing the exemption limit since in the past, the exemption limit was increased from Rs.1,000 to Rs.5,000 and also in view of the increased cost of inflation index and the basic exemption limit of taxable income over a period of time.

### PAN of the deductees required to be furnished :

U/s 139A (5B) of the Income Tax Act, the Permanent Account Number of the deductees is required to be furnished on all the TDS certificates, all the returns and the quarterly statements. The Income Tax Dept. issued instructions not to accept the quarterly TDS returns from 30-9-2007 in Form.26Q, with less than 70% of PAN.

In the horse racing industry, the volume of punters is large and casual. They are not regular and do not have any established identity or prior commitments with the race clubs, unlike in the case of other industries, the identity is established as suppliers or buyers with prior commitments. The customers are mostly small time punters whose incomes are below taxable limits. They may not have PAN and many declare that they do not have PAN. In such circumstances, the race clubs cannot stop payment for want of PAN and can not furnish PAN of 70% of winners.

### No Certificate permitted for deduction at lower rate :

U/s 197 of the Income Tax Act, almost all kinds of persons whose income payments are subjected to TDS have a privilege under this section to apply to the concerned Assessing Officer for giving a certificate enabling the deductor to deduct tax at a lower rate. But such privilege is not available to the winners of horse race dividends. This is because the race winnings are taxed at a flat rate u/s 115BB, without allowing any expenditure and basic

exemption.

### No Privilege of request for no deduction of tax :

U/s 197A, some individuals have the privilege of furnishing a declaration to the tax deductors at source, that their total income would be nil and on the basis of such declaration, there would not be any deduction of tax at source. But such privilege is not extended to the persons winning income from races. This is again because race winnings are taxed at a flat rate u/s 115BB, without allowing any expenditure and basic exemption.

### Tax deduction at source from the winnings from horse races:

U/s194BB of the Income Tax Act, the race clubs are obliged to deduct tax at source from the winnings exceeding Rs.2500, at the rates in force. Here again the limit of Rs.2500 has been reduced from Rs.5000 w.e.f 1-10-1991. This limit of Rs.2500 is not justified in view of the increased basic exemption limits of taxable income of individuals from Rs.22000 in FY 1991-92 to Rs.1,00,000/1,35,000/1,95,000 in 2007-08. Again it is not logical to accept the limit of Rs.2500 when the cost of inflation index in FY 1991-92(199) is more than double (551) now in FY 2007-08.

### Tax at Flat Rate :

U/s 115 BB of the Income Tax Act, the winnings from horse races are taxed at a flat rate of 30% plus 3% education cess. There is no logic and justification found to tax such income at the flat rate without allowing any expenditure and any basic exemption. Earlier such income was treated as casual income u/s 10(3) and it was excluded upto Rs.5,000/- and later upto Rs.2,500. Subsequently the income from Race winnings lost the character of casual nature consequent to the omission of sec.10 (3). It means that, from then onwards, such income was treated as a regular income. When race winnings are treated as regular income, there is no reason for why the expenditure incurred to earn such income in a year should not be allowed, when the annual expenditure is allowed against of all other regular incomes.

### Payment of dividends in cash in excess of Rs.20,000 :

U/s 40A(3) any expenditure in cash exceeding Rs.20,000 shall not be allowed as a deduction. The income tax authorities are bringing the dividend payments in cash exceeding Rs.20000 under the purview of this section and such cash payments are being disallowed. This is again not practical in the case of race clubs for the following reasons:

- | All the payment counters (about 500 in each race club) cannot be equipped with cheque books and bank drafts.
- | The persons authorized to sign the cheques and bank drafts cannot be made available at all payment counters.
- | The races are always held on Sundays, public holidays and in the afternoons when the banks do not operate.
- | Small-time punters who are maximum in number may

not have bank accounts.

- | Many punters may not be obliged to obtain PAN.
- | The payment of dividend is not at all an expenditure. In fact such payment is a distribution of dividends out of the pool money collected, after retaining the govt. taxes and clubs' commission. This dividend payment is not made out of the income earned by the race clubs, since the entire pool money does not belong to the clubs. Therefore it is not the income of the race clubs. The income of the race clubs is only commission. The dividend payment is not debited to the commission account or the profit and loss account of the clubs. Therefore the dividend payment should not be brought u/s 40A(3) for disallowance.
- | If the cheque payments are required to be made, the reinvestments are postponed or not made at all by the winners. If such payments are made in cash, the reinvestments will follow immediately and thereby the govt. tax collections and clubs' commission will be increased.
- | There will be a delay in payment by cheques for want of cheques more particularly at the off-course betting centers far away from the regd. office of the race clubs. Such delays will certainly have a negative impact on the reinvestments, club commission and govt. taxes.

#### **TDS Certificates in Form 16A :**

A TDS certificate in Form 16A is required to be given by the race clubs u/s 203 and rule 31(1)(b). In this certificate, the acknowledgement numbers of the quarterly statements of TDS filed by the race clubs is required to be furnished. With this requirement of furnishing the acknowledgement number, the TDS certificate cannot be issued to the winner till the quarterly return is filed after end of the quarter. In such circumstances, the TDS certificates have to be kept pending without issuing to the winners till the quarterly statement is filed.

Under rule 31(3), the TDS certificate shall have to be issued within one month from the end of the month during which the sums have been paid. When the TDS certificate is required to be issued within one month as above, how can the acknowledgement number of the current quarterly statement of TDS be furnished in the Form 16A? There appears to be an anomaly in this.

#### **No Privilege of furnishing any declaration where there is no PAN :**

Under rule 114 C (1) of the Income Tax rules, a declaration in Form No.61 can be filed by certain persons not having PAN in respect of certain transactions referred to in rule 114 B. But the race winnings are not included in such transactions. Hence the persons not having PAN but having only winnings from horse races are deprived of furnishing such declarations to the race clubs and get exempted from the requirement of having and quoting PAN.

#### **No set-off of losses from the business of owning horses**

#### **and no carry forward for more than 4 years :**

U/s 74 A of the Income Tax Act, a loss from the business of owning horses cannot be set off against any other business income or any other income in the same year, whereas losses from other business are allowed to be set off against any other business income or even income from other sources.

Again, such unabsorbed losses from owning horses are allowed to be carried forward upto 4 years for set-off against such income in future from owning horses u/s 74A(3) whereas the other kinds of business losses, are allowed to be carried forward upto 8 years for set off against such future incomes.

#### **Remedy :**

Upon representation by various turf clubs and race clubs, under the provisions of Sec.119 of the Income Tax Act, the Central Board of Direct Taxes may issue such orders, instructions and directions to the subordinate authorities, and relax some of the provisions of some sections of the Act, issue guidelines, principles or procedures to be followed by other Income Tax authorities to remove any genuine hardship.

The CBDT may also, by a general or special order, authorize any income tax authority to admit an application or claim for any exemption or any relief under this Act.

The Board may also, for avoiding genuine hardship in any case or classes of cases, by general or separate order, relax some provisions of the Act.

Besides these instructions by the CBDT, the Govt. may also amend the Act and rules to avoid genuine hardship to any class of persons upon the representation from the aggrieved class of persons.

#### **Conclusion :**

There are many institutions, business organisations and individuals depending on the racing industry in India. Therefore the racing industry deserves protection in all respects from the Government. There are 5 Turf Clubs and about half a dozen small race clubs in India. Besides these, there are many stud farms, race horse owners, trainers, jockeys, stable employees of different cadres, employees of various Turf Clubs and Race clubs. If the racing industry is put to any hardship with such above mentioned hurdles, the growth, improvement and smooth functioning and carrying on the business of Racing will be jeopardised and the income in the form of taxes to the State and Central Govts. will be decreased. In fact the money in dark sees the light in this industry alone without any amnesty scheme of the govt. thereby contributing to the economy in general. Therefore the govt. should protect and encourage any industry including racing industry which contributes sizeable income to the state exchequers by way of taxes without any effort of the govt. Such encouragement may be in the shape of giving some sops in the tax laws and by removing the hardships and hurdles discussed above. Therefore the racing industry deserves a reconsideration and review of these hardships by the Finance ministry for providing a hurdle free track to the racing industry.