Direct Tax Vista

Your weekly Direct Tax recap

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Friends,

After 100 Issues of DTV, we halted the publication of weekly Direct Tax Vista (DTV). Now we are re-starting the same with some special features. Each DTV would be in three Sections and shall include as follows: –

Section I - Coverage and Updates on Income Tax Act Revamp from 1st February 2025 as announced by the Union Finance Minister in The Budget (No.2) in 2024.

Section II - Video on Weekly Developments under Income Tax, International Taxation & International Trade

Section III - Coverage of most critical issues in Income Tax, International Taxation & International Trade in the bygone week.

We hope that this revamped DTV would assist you in your professional spheres.

Section I - Coverage and Updates on Income Tax Act Revamp from 1st February 2025 as announced by the Union Finance Minister in The Budget (No.2) in 2024

1. Income Tax Act Revamp: An Introduction

In pursuance of the announcement in the Union Budget 2024-25 by Union Minister for Finance and Corporate Affairs Smt. Nirmala Sitharaman, the Central Board of Direct Taxes (CBDT) has formed an internal committee to oversee a comprehensive review of the Income Tax Act, 1961. The Committee for Comprehensive Review of

the Income Tax Act, 1961 has been now formed under the chairmanship of Mr V K Gupta, Chief Commissioner of Income Tax.

The review exercise would not entail any major procedural or tax rate changes to the Act. It aims at bringing about rationalisation and simplification in the Income Tax Act, 1961. The goal is to make the Act concise, clear, and easy to understand, which will reduce disputes, litigation, and provide greater tax certainty to taxpayers.

The committee has invited public inputs and suggestions in four categories:

1. Simplification of Language
2. Litigation Reduction
3. Compliance Reduction, and
4. Redundant/Obsolete Provisions

To facilitate this, a webpage has been launched on the e-filing portal, which can be accessed with the following link:

https://eportal.incometax.gov.in/iec/foservices/#/pre-login/ita-comprehensive-review

The above link is live and accessible to the stakeholders/experts/public in the E-filing portal from 06.10.2024. The stakeholders/experts/public can access the page by entering their name and mobile number, followed up by a validation via OTP.

Suggestions by stakeholders/experts/public should specify the relevant provision of the Income-tax Act, 1961 or Income-tax Rules, 1962 (mentioning the specific section, sub-section, clause, rule, sub-rule, or form number), as the case may be, to which the suggestion relates under the aforementioned four categories.

To start with, the following broad concerns have been raised

- Abridged version of the Income Tax Act to be introduced for small taxpayers
- Provisos to various sections to be removed and subsumed in the language of the section.
- One section to have more than one small and simple substances
- Department to have one consistent view on a provision
- Tax holidays and sunset clauses to be removed as far as possible
- Mediation machinery to be established with retired officers and independent professionals
- Decriminalisation of provisions
- Concerns on faceless assessments to be addressed
- Surcharge and Education cess to be subsumed in the tax rate
- Form 3CD to be a comprehensive certificate, which can be used for multiple purposes
- Illustrations to be incorporated in sections, where specific situations are targeted
- Definitions of various terms to be harmonised with other related Acts
- Tax department to come out with a periodic commentary, such as done by OECD
- TDS provisions to be rationalised
- Coordination between CPC and Assessing Officer to be streamlineds
- Department to highlight the major sources of litigation
- Department to come up with a utility with important provisions and information for small taxpayers

We shall come out with our views on Income Tax Revamp further in the upcoming bulletins

Section II - Video on Weekly Developments under Income Tax, International Taxation & International Trade

The URL for this week's video is hereinunder-

https://www.youtube.com/watch?v=TjyHvDiZxKg

Section III - Coverage of most critical issues in Income Tax, International Taxation & International Trade in the bygone week

1. Income from Renting under 'House Property Income' or 'PGBP'

Income from rental property has different connotations depending on whether it is treated as house property or business income –

- Rental income from a property could be treated as income from House Property and/or income from Business and Profession.
- If the property income is declared as business income, then the owner can claim a tax deduction on actual expenses.
- Property income is considered as income from house property if the property is not used by the owner for business or professional purposes.

An individual would prefer to show rent as business income, which allows her/him to deduct all the expenses incurred to maintain the property, claim depreciation and not pay notional rent when the property is not let out. Whereas, Taxability as House Property provides a standard deduction which is limited to 30% of the income along with a deduction on interest paid on borrowed capital for the purposes of acquisition, construction, repair, reconstruction, (subject to limitations provided under the Act). Taxpayers will always go to option of including rental income as business income which will in turn mean revenue loss for the government.

The Finance Act (No 2) 2024 inserted 3rd explanation to Section 28 of Income tax Act as follows, w.e.f. 01-04-2025 - *[Explanation 3.––It is hereby clarified that any income from letting out of a residential house or a part of the house by the owner shall not be chargeable under the head "Profits and gains of business or profession" and shall be chargeable under the head "Income from house property"]*

However, for the period before this, the debate continues.

In the case of **NATIONAL LEASING LIMITED Vs THE ASSISTANT COMMISSIONER OF INCOME, CIRCLE 3(6), MUMBAI [2024-VIL-192-BOM-DT],** the appellant claimed that such income from renting property should be classified under "Income from Profits and Gains of Business or Profession" rather than "Income from House Property".

The Hon'ble High Court gave various principles for determining the same –

1. **Primary business activity to be seen** - The nature of the business and the main objective as defined in the Memorandum of Association should be seen. As per the **Supreme Court's judgment in M/s. Chennai Properties & Investments Ltd., Chennai vs. The Commissioner of Income Tax, Central-III, Tamil Nadu** [(2015) 14 SCC 793], when leasing properties is the primary business activity, such income should be classified as business income. The SC judgement in the case of East India Housing and Land Development Trust V/s. CIT – (1961) 42 ITR 49 (SC) is distinguished.

2. **Principle of consistency to be seen** - The principle of consistency as established in **M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax** [(1992) 1 SCC 659] is important. Incase the department had treated similar income as business income for many previous assessment years, and there is no change in the business, the stand cannot change now.

2. TNMM Vs Cost-Plus Method

Transfer pricing is an art and not a perfect science; It may at best be an imperfect science. Where AE transactions happen at an Operating margin which is substantially less than non-AE Sales, can TNMM method be used or is Cost-Plus method most appropriate. The ITAT-Ahmedabad in the case of **THE ACIT Vs INDUCTOTHERM (INDIA) PVT LTD [2024-VIL-1492-ITAT-AHM]** held that the volume of transactions, geographic differences, and market-level and other considerations should also be seen when rejecting TNMM applying CPM.

Incase AE sales are for a big volume as against non-AE sales; Incase they are for a different function and to a different geography, then the same also need to be considered.

3. No TDS u/s 195 on Foreign agents commission incase they are operating completely out of India

Incase foreign agents are based out of India, are rendering services out of India, are operating exclusively outside India and do not have do not have any establishment in India, then no tax liability arises or accrues in India. Section 195 of the Act applies to Commission to foreign agents only if payment made to the non-resident is taxable in India.

The Hon'ble Supreme Court ruling in CIT vs. Toshoku Ltd. (1980) 125 ITR 525 (SC), the CIT(A) concluded that commission payments to foreign agents, who operate exclusively outside India do not attract tax liability in India.

The ITAT-Ahmedabad in the case of **THE ACIT Vs INDUCTOTHERM (INDIA) PVT LTD** [2024-VIL-1492-ITAT-AHM] observed that Section 195 of the Act applies only if the payment to the non-resident is taxable in India. Incase commission was not taxable in India, the obligation to deduct tax under Section 195 of the Act does not arise. The decision is in line with judicial precedents, including the Hon'ble Supreme Court ruling in the case of CIT vs. Toshoku Ltd. (1980) 125 ITR 525 (SC)

4. Procedure for Invoking re-opening u/s 147

Re-openings under Section 147 cannot be invoked based on alleged unexplained cash credits and subsequent addition under Section 68, on alleged un-explained loans or share-premium, when the transactions were already scrutinized under Section 143(3) in the original assessment. For a reopening under Section 147, the following must be satisfied –

1. There must be a "reason to believe" that income has escaped assessment
2. The "reason to believe" must be based on tangible material
3. There should not be a mere change of opinion

4. There should not be incorrect factual premise justifying reopening.
5. The assessing officer has to obtain the sanction of the specified authority u/s. 151 of the Act before issuing a reassessment notice.
6. The assessing officer is also required to afford an opportunity of hearing in terms of decision of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. V. Income Tax Office (2003) 1SCC72.

Referring to the Supreme Court's ruling in **CIT v. Kelvinator** [2010] 187 Taxman 312(SC), the ITAT in the case of **TEAM GLOBAL LOGISTICS PVT LTD Vs DCIT [2024-VIL-1491-ITAT-MUM],** held that reopening based on previously examined issues during scrutiny assessment constitutes a change of opinion, which is not permissible.

5. Doctrine of Merger of Order of a Higher Court with the Assessment Order

Incase an ITAT or Higher Court passes an order for an assessment year, an identical issue again cannot be raised by the Pr.CIT by invoking his powers u/s 263 of the Act as the order of the AO as well as the CIT(A) in 147 proceedings in subsequent appeal gets merged with the order of the ITAT. This is the Doctrine of Merger.

Hence, after this merger, the "issue" attains finality. The Pr.CIT can of-course revise u/s 263 on a different issue. The same was held by The ITAT Chandigarh in the case of **THE DCIT Vs VALCO INDUSTRIES LTD [2024-VIL-1490-ITAT-CHD].**

6. Order issued on the basis of notice without jurisdiction is 'non-est'

The ITAT Delhi in the case of 'Sh. Mukesh Kumar vs. ITO' in ITA No. 2358/Del/2012 vide order dated 12.06.2015, held that the notice as issued u/s 148 by the non-jurisdictional Assessing Officer is non-est in the eyes of law and Assessing Officer will not get valid jurisdiction, even though the case is transferred under the provisions of Section 127 of the Income Tax Act, 1961. Hence a case where notice has been issued by a non-jurisdictional Assessing Officer and the assessment having been framed by the other Assessing Officer is non-est in law.

The Hon'ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349ITR 271 (All.) held that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid.

The same ratio is upheld even by The ITAT-Chandigarh in the case of **THE DCIT Vs SHRI MANJEET SINGH [2024-VIL-1494-ITAT-CHD]**

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