Direct Tax Vista

Your weekly Direct Tax recap

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Friends

We are pleased to put forth this issue of DTV in two Sections as under -

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

Section II - 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 (Comprehensive Review) from 1st February 2025 as announced by the Union Finance Minister in The Budget (No.2) in 2024

Crowdsourcing of ideas for the Income Tax Act revamp is aimed at addressing the practical challenges faced by taxpayers, accountants, and legal professionals, ensuring that their real-world experience will help shape the reforms. We have been providing our suggestions regularly and now are dealing with some more in this space –

1. Faceless assessments should be made more flexible:

Prescribe conditions based on which taxpayers can seek to be assessed by Jurisdictional Assessing officer ('JAOs') instead of NFAC:

Introducing faceless assessment has obvious advantages, but for Large Taxpayers it is a practical challenge for the officer to understand facelessly, the nitti-gritties. For Eg. A Large Taxpayer may have more than 10,000 creditors ledgers and even if he submits it to the officer, it is practically impossible for the officer to understand it unless one explains. Due to this hardship many a times high pitched demands are raised on issues which can easily be resolved in one manual hearing. Hence it is suggested to prescribe conditions based on which taxpayers can seek to be assessed by Jurisdictional Assessing officer ('JAOs') for manual tax assessment instead of NFAC for faceless assessment. It would be beneficial as there would be a personalized, localized approach for complex businesses.

Recording of videoconferencing to be readily available on income-tax website: The income tax law allows for the conduct of assessment proceedings via video conferencing. The efforts made are acknowledged wherein these video conference are recorded by the service provider and sent through a link to the email address registered on the income-tax portal. However, there is room for some improvements.

First, it is noticed that the links to these recordings have a limited validity period. Moreover, in certain instances, it has come to attention that these links are not consistently received by taxpayers. Therefore, it is suggested that these recordings be made accessible on the taxpayers on the income tax e-filing portal itself. Furthermore, it would be beneficial to extend the duration during which these recording copies can be downloaded, ideally to a minimum of three years from the date of the video conferencing proceedings.

2.Global Minimum Tax: Pillar 2 Implementation:

Several countries across the globe have already incorporated / are in the process to bringing in domestic tax laws for BEPS Pillar 2 implementation. However, currently, India has not provided a road map for Pillar 2 implementation, and the form in which changes would be made in domestic law.

It is recommended that clarity be provided regarding India's roadmap for Pillar 2 implementation.

Draft domestic legislation should be shared for stakeholders' consultation for a reasonable span of time, considering this is a complex regulation.

This would provide tax certainty to impacted MNE groups.

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

1. Taxpayers with undisclosed Foreign Assets like real estate, bank accounts, shares, debentures, insurance policies or Foreign Income to revise their ITRs by 31st December 2024, atleast those who get e-mail or SMS

It is understood that 2 lakh ITRs have been filed so far during the current assessment year giving details of foreign assets and income. All Indian residents are required to declare their foreign assets. This can include real estate, bank accounts, shares, debentures, insurance policies or any other financial assets. A resident Indian is also required to inform the Income Tax Department about the shares received from their employers and income earned through employee stock options by filling the foreign assets and foreign source income schedule.

The CBDT has vide Press Release dated 16th Nov 2-24 has launched a Compliance-Cum-Awareness Campaign for Assessment Year (AY) 2024-25 to inform taxpayers to accurately complete their Schedule Foreign Assets and reporting income from foreign sources in their ITRs. Compliance with Schedule FA and FSI is mandatory under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which requires the full disclosure of foreign assets and income.

These messages will be sent to individuals identified through information received under bilateral and multilateral agreements, suggesting that they may hold foreign accounts or assets, or have received income from foreign jurisdictions.

Those who have such assets or income but have filed ITR-1 or ITR-4 will have to file revised or belated returns by December 31, 2024, to avoid penalties and prosecution as prescribed under the anti-black money law. The taxpayer should use ITR-2 or ITR-3 as per his tax profile to correctly reflect the Schedule Foreign Assets (Schedule FA). Incase taxpayers do not disclose the income earned from their foreign assets or their foreign assets in the ITR, they may be fined up to Rs 10 lakh.

The Common Reporting Standards (CRS) by OECD and Foreign Account Tax Compliance Act (FATCA) by USA are other such international initiatives to keep tax evasion under check. Under CRS and FATCA, India receives detailed information about financial accounts held by its residents in foreign jurisdictions. This includes:

- Account holder's name, address, and tax identification number (TIN)
- Account number and balance
- Income details such as interest, dividends, and other financial proceeds.

This information helps the Income Tax Department to know global income of its resident taxpayers and to identify taxpayers who may not have disclosed their foreign assets and income.

For further guidelines, one can access – https://www.incometax.gov.in/iec/foportal/sites/default/files/2024-11/Enhancing%20Tax%20Transparency%20on%20Foreign%20Assets%20and%20Income.pdf

2. Conduit Entities being "pass through entities" providing accommodation entries shall be assessable on the basis of commission received

In the whole scheme of providing accommodating entries, it may be appreciated that there are two categories of entities involved-

1. the companies which are beneficiaries of the accommodation entries provided by the provider of accommodation entries and such companies are

under obligation to discharge burden u/s 68 of Income Tax Act, qua the credits accepted from entry providers.

2. Companies which are used as conduit for providing accommodation entries by multi-layering of transactions. Such companies are simply engaged in providing accommodation entries either intra group or to the beneficiaries from the funds transferred by the group companies of providers of entries.

Lets understand by an example –

Say a Company A (main Co.) provides the total credits to a conduit entity (B) which thereafter provides entry to beneficiary entity (C). Now 'B' receives Rs.1 Crore out of which it passes on Rs.99.7 Lakhs to 'C' and retains 0.3% ie. Rs.0.3 Lakhs. There can be other entities in a multi-layering process adopted in the accommodation business too.

In this example 'C' would be liable u/s 68 read with Section 115BBE for Rs.1 Crore as Unexplained Credit. However, as held by The Hon'ble ITAT Delhi in the case of NEW EDGE SHARES & SECURITIES PVT LTD Vs ITO [2024-VIL-1615-ITAT-DEL], B would be liable to tax only to the extent of Rs.0.3 Lakhs income of commission.

3. Advance is taxable in year of receipt

Incase of a works contractor or a AMC provider or another service provider, collection of the entire year's charges is done at one go in advance. The amount is many a times recorded as "current liability" in the balance sheet as "income received in advance."

The question for income tax purpose is whether it is to be treated for Income Tax purpose that the entire amount is taxable income in the year of receipt, or on grounds of "matching principle" and AS-9 guidelines it is taxable under mercantile accounting and deferred. In the case of **THE COMMISSIONER OF INCOME TAX, CHENNAI Vs M/s JOHNSON LIFTS PVT LTD [2024-VIL-211-MAD-DT]** it was held that Advance AMC receipts constitute income in the year of receipt as –

1. There was no clause for refund, and the amounts were non-refundable.

2. The provisions under Section 5 of the Income Tax Act mandate the inclusion of amounts received in total income when received, irrespective of when the service obligation is fulfilled
3. The reliance on the "matching principle" under AS-9 is misplaced, especially where the consideration is received upfront and the service obligation spans a short duration (one year say).
4. The principle is not absolute and must yield to specific tax laws
5. Invocation of Section 41(1) of Income tax Act to substantiate the deferred liability treatment was erroneous as the section pertains to remission or cessation of a liability, not recognition of revenue for services to be rendered.

It is pertinent to note that the Point of Taxation Rules under Service tax and the VAT Rules were also deliberated in as much as incase income is chargeable to tax there, then why should it not be taxed in income tax. However, the main difference there and here is the fact that such rule for payment of tax on advance basis is specially carved out in such Laws. In income tax Act Section 145 allows acceptance of accrual basis of accounting.

4. For alleging 'mis-reporting of income' the specific clause of Section 270A(9) should be mentioned

The concepts of 'under reporting of income' and 'misreporting of income' are two different charges with very clear boundaries. Sec.270A(2) of the Income Tax Act, deals with concept of 'under reporting of income' and for this, 50% penalty is provided. Section 270A(9) deals with concept of 'misreporting of income' and for this, 200% penalty is provided. Therefore, 'under reporting of income' and 'misreporting of income' shall not be used interchangeably nor are they synonymous, but each operates under strict definition and do not overlap each other. The AO, before initiating penalty proceedings should specifically arrive at a satisfaction to the effect that, for which charge, he has initiated penalty Sec.270A of the Act.

Incase of 'misreporting of income', the specific of the 6 clauses of Sec 270A(9) should be clearly specified as follows –

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; and

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Incase the clause reference is not there, then the notice would be considered as a vague notice and initiation of penalty u/s.270A of the Act for 'misreporting of income' would be erroneous, arbitrary and thus, penalty proceedings cannot be sustained.

This legal position was held in JAYASAKTHI KNIT WEAR Vs THE ITO [2024-VIL-1611-ITAT-CHE], taking a cue from the decision of the Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP. Similar view was upheld by The Hon'ble Supreme Court in the case of CIT v. SSA's Emerald Meadows reported in [2016] 73 taxmann.com 241.

5. Form 42, 43 & 44 for Appeal against recognition or approval of provident fund, superannuation fund or gratuity fund, now online

The CBDT, through Notification No. 06/2024 dated November 19, 2024, has mandated electronic filing for certain forms under Rule 131 of the Income Tax Rules, 1962. It has now specified that Forms 42, 43, and 44 must be filed electronically and verified as per sub-rule (1) of Rule 131.

Form 42: Appeal against refusal or withdrawal of recognition for a provident fund.
Form 43: Appeal against refusal or withdrawal of approval for a superannuation fund.
Form 44: Appeal against refusal or withdrawal of approval for a gratuity fund.

This notification will take effect from November 22, 2024.

6. RBI notifies amended Forex Rules to ease DPIIT recognized start-ups recognition

DPIIT through a 2019 notification had liberalised the definition of a startup. Earlier, a company could be designated as a startup for only five years. This has been later relaxed to 10 years from its date of incorporation. Also, a higher turnover threshold of Rs 100 crore was put in place, compared to Rs 25 crore earlier. Now, RBI has vide Notification No. FEMA 10 (R)/(4)/2024-RB; Dated: 19.11.2024, notified Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Fourth Amendment) Regulations, 2024 to replace the definition of the startup with the revised definition of startups.

This would simplify authorised dealers to allow opening of foreign currency bank accounts of DPIIT recognised start-ups.

7. Condonation of delay in filing Form 9A/10/10B/10BB for NPOs and 10IC and 10ID for Corporates for availing lower rate of tax

The issue is no more res-integra that there cannot be a denial of benefit of section 11 & 12 incase assessee merely fails to file form no. 10B before the due date of filling the return of income, after multifarious Court judgements including High Courts and co-ordinate benches of ITATs. Hence, The CBDT issued Circular No. 16/2024 on 18.11.2024 u/s 119(2)(b) of Income Tax Act to accept applications for condonation of delay in filing Form 9A/10/10B/10BB for Assessment Year 2018-19 and subsequent A.Y. This circular supersedes all prior instructions / circulars / guidelines issued by CBDT in this context.

Applications for delays for any period of time will be accepted. Pr. CsIT & CsIT can admit applications for delays of up to 365 days; while Pr. CCsIT, CCsIT, DGsIT are authorized to deal with applications for delays beyond 365 days.

Applications must show a reasonable cause for delay, and the applicant should demonstrate genuine hardship. For Example, incase any medical issue is there, then a medical certificate should be available. Incase any technical glitch is there, then a screenshot should be available. For Form 10, authorities will also verify that the funds have been invested in specified modes under section 11(5) of the Act.

Timelines need to be adhered to in as much as that applications will not be entertained beyond 3 years from the end of the relevant assessment year. However, this time limit for filing of such application within 3 years from the end of the assessment year will be applicable for application filed on or after the date of issue of this Circular. Hence, cases related AY 2018-19 to AY 2020-21 are not affected due to this provision, if application is already filed and pending for disposal.

Applications should be disposed of, as far as possible, within 6 months from the end of the month in which such application received by the Competent Authority.

Forms 9A, 10, 10B, and 10BB are crucial filings for charitable and religious trusts, as well as educational and medical institutions, to claim tax exemptions under the Income Tax Act.

- **Form 9A:** This form is used by trusts or institutions to exercise the option to apply income in the subsequent year, in cases where 85% of the income couldn't be applied during the previous year.
- **Form 10:** Trusts or institutions use this form to accumulate income for specific purposes, detailing the amount and period of accumulation.
- **Form 10B:** This is the audit report required under section 12A(b) of the Income-tax Act, 1961 certifying that the accounts of the trust or institution have been audited.
- **Form 10BB:** Similar to Form 10B, this form is the audit report for educational or medical institutions claiming exemption under sections 10(23C)(iv), (v), (vi), or (via).

The CBDT issued another similar Circular No. 17/2024 on 18.11.2024 u/s 119(2)(b)

of Income Tax Act to accept applications for condonation of delay in filing Form 10-IC for the 22% tax rate and Form 10-ID for 15% tax rate u/s 115BAA and 115BAB. In 2019, the CBDT significantly reduced corporate tax rates. Domestic companies have an option to apply a reduced corporate income tax rate of 22%, while new domestic manufacturing companies incorporated on or after 1 October 2019, that commence manufacturing or production by 31 March 2024 could apply corporate income tax rate of 15%. To avail these income tax rates, taxpayers must meet specified conditions, declare the choice in their tax return, and file the prescribed forms viz. Form 10-IC for the 22% rate and Form 10-ID for the 15% rate, within the due date of filing the return.

The following conditions should be satisfied, while deciding such applications: -

> (i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;
> (ii) The assessee has opted for taxation, u/s 115BAA of the Act in case condonation of delay is for Form No. IO-IC and u/s I 15BAB of the Act in case condonation of delay is for Form No. 10-ID, in "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and
> (iii) The assessee was prevented by reasonable cause from filing such Form before the expiry of the time allowed and the case is of genuine hardship on merits."

The conditions of category of officers condoning the delay as well as timelines are the same as Circular 16/2024.

8. Mere mis-description of a party in a notice is a curable defect

Section 292B states as follows -

> ***"292B.*** *No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of*

any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.]"

In **CIT Vs. Jagat Novel Exhibitors P. Ltd.** [2013] 356 ITR 559 (Del), the Court came to the conclusion that mis-description of a party in a reassessment notice could not render the entire proceedings to be null and void and it would be a curable defect as envisaged under Section 292-B of the Act. Also in **Sky Light Hospitality LLP v. Assistant Commissioner of Income-Tax** [2018] 405 ITR 296 (Del), the Supreme Court affirmed that the wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Act.

The same was confirmed in **COMMISSIONER OF INCOME TAX (TDS)-1 Vs M/s ADMA SOLUTIONS PVT LTD [2024-VIL-210-DEL-DT].**

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