Direct Tax Vista

Your weekly Direct Tax recap

Edn. 105 – 10th December 2024

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Friends

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

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.

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

As Shri Sanjay Malhotra, Revenue Secretary becomes the Next RBI Governor and the MoF awaits the new Revenue Secretary, the update on the Income Tax Act revamp is that it is possible that only a part of the Income Tax Act is revamped or comprehensively reviewed in the upcoming Union Budget 2025. Balance may be done going forward. Accordingly we provide few more issues which need to be highlighted and reviewed and amended therein –

1. Interest on Income tax refund to be allowed on the "Amounts due" rather than only the tax amount

There is a confusion in the current law u/s 244A whether interest is eligible on amounts due or only principal amount of tax. The same should be clarified to reduce litigation

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

https://www.youtube.com/watch?v=4mIC0FsWCTQ

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

1. Ordered even without any appearance from appellants side...Form 67 is directory and not mandatory to claim foreign tax credit

The provision of DTAA override the provision of Section 90 of the Income Tax Act as they are more beneficial to the assessee, in view of judicial pronouncements in this regard and since Rule 128(9) does *not preclude the assessee from the claiming credit for FTC in case vested right of the* assessee and Form No. 67 was filed by the assessee (even after the end of the relevant assessment year), there was no justification for not allowing the credit for FTC was held by The Hon'ble ITAT Kolkata in the case of **JASPAL SINGH BINDRA Vs DCIT [2024-VIL-1664-ITAT-KOL]** in Nov'2024, and that too when nobody appeared from the assessee's part. Hence, it is high time that necessary amendments should be made in the Income Tax Act/Rules to incorporate the process of claiming the tax credit, where the foreign tax credit certificates are received by an assessee even after the end of the assessment year. This would avoid hardship for the NRI assessees and will also serve the ends of natural justice.

The background of the issue is that as per the provisions of section 90 read with Rule 128 and Form 67, an assessee is entitled to relief of the tax paid in foreign country on the income which is also taxed in India, as per the prescribed guidelines. As per Rule 128, for claiming the tax credit under section 90, the assessee needs to file Form 67 along with the proof of payment of tax on or before the end of the assessment year relevant to the previous year in which FTC is claimed by an assessee [as per the recent CBDT Notification No. 100 of 2022].

In cases where the details of such foreign tax payment are available to the assessee company only after the end of the relevant assessment year, the above timeline prescribed for filing Form 67, continue to act as deterrent to claim the tax credit u/s 90 of the Act. Till now, When such FTC relief was being claimed during assessment, the assessing officers are raising objections citing non filing of such additional claim before the due date of filing the return of income & now it is said it should have been claimed before end of the AY. As a result, the assessees are being denied tax credit for no fault of theirs, since it is impossible to make such claims in the absence of requisite details, for which Indian assessees are helpless and are dependent on the tax authorities of respective foreign jurisdiction.

However, even barring the amendment, the issue is whether Form 67 is mandatory or directory for claiming foreign tax credit. In a decision in Anuj Bhagwati vs DCIT, in ITAs No.1844 and 1845/Mum./2022, the coordinate bench of the Tribunal vide order dated 20/09/2022, while deciding the issue held that section 90/91 of the Act has not been amended insofar as grant of foreign tax credit is concerned and Rules cannot override the Act and therefore filing of Form No. 67 is not mandatory but it is directory. Following the decision, it was held in the case of **NIRMALA MURLI RELWANI Vs ASSTT. DIRECTOR OF INCOME TAX [2022-VIL-1550-ITAT-MUM]** that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), will not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India.

Again, what happens incase Form 67 is not filed erroneously. In the case of **DCIT, CIRCLE – 2(2)(1), BENGALURU Vs SHRI. DEVESH M NAYEL [2024-VIL-173-ITAT-BLR]** it was held that where on realizing the mistake that Form 67 was not filed along with return of income and same was filed subsequently, the delay should not be considered as fatal to claim FTC.

Hence until a consequential amendment is made, foreign tax credit can be claimed accordingly on the basis of the decisions.

2. Guarantee fee paid to foreign Co. for financial assurance extended to Indian financial institutions, is not taxable in India unless the assessee has a PE in India

Guarantee fee, paid for financial assurance extended to Indian financial institutions, is not taxable in India under the DTAA unless the assessee has a PE in India, especially when the loan itself was from a bank outside India as was held in the case of **DAE WON KANG UP CO LIMITED Vs DCIT [2024-VIL-1658-ITAT-CHE]**. The payment could be classified as business income under Article 7 or residuary income under Article 22, both granting exclusive taxation rights to Korea in the absence of a PE.

However, the income could rightfully be Business Income under Article 7 of DTAA, as this particular income does not fall under miscellaneous income at all and cannot be brought under Article 22 under "Other Income", the said principle is clearly laid in the High court decision in **Bangkok Glass Industries Pvt Ltd Vs ACIT (257 CTR 356)**,

3. Writ maintainable incase AO makes a case u/s 68 for unexplained credit ignoring documentary evidence

Receiving unsecured loans and making repayment of unsecured loans and consequential allegation of circulating money between different parties cannot be a ground for invoking Section 68 for unexplained credits. Documentary evidence, like bank statements, ledger account confirmations, PAN details, and income tax returns of lenders have to be examined in details and then only can a case under Section 68 of Income Tax Act be framed as lack of proof of genuineness and creditworthiness of the parties as was held by The Hon’ble Gujarat High Court in the case of **SHAH**

TOBACCO TRADING CO Vs ADDITIONAL /JOINT /DEPUTY /ASSISTANT COMMISSIONER OF INCOME TAX & ANR [2024-VIL-225-GUJ-DT].

Ignoring such material documentary evidence would violate the principles of natural justice and hence the assessee may undertake the Writ remedy under Article 227 of The Constitution.

The principles of natural justice requires the AO to evaluate and address the documents submitted, failing which the order cannot stand. While alternative remedies existed, such procedural lapses justified the exercise of its extraordinary jurisdiction under Article 227 of the Constitution.

4. TDS u/s 192 on salary can be adjusted and paid at the end of the year incase indeterminable earlier... without interest

A duty is cast on an employer to form an opinion about the tax liability of his employee in respect of the salary income. While forming this opinion, the employer is undoubtedly expected to act honestly and fairly. But if it is found that the estimate made by the employer is incorrect, this fact alone, without anything more, would not inevitably lead to the inference that the employer has not acted honestly and fairly. Unless that inference can be reasonably raised against an employer, no fault can be found with him. It cannot be held that he has not deducted tax on the estimated income of the employee. Incase of expats/ staff travelling on foreign ships it becomes virtually impossible to determine the residential status of such staff members at the start of the year or even midyear, as the actual status becomes apparent only towards the end of the year. Hence, in as far as levy of Interest on TDS u/s 201(1A) of Income tax Act on Salaries, the following needs to be kept in mind –

1. The provisions of Section 192(3) permit adjustments for excess or deficient TDS within the financial year.

2. The assessee's inability to determine residential status of expats/ floating crew/other staff at the beginning of the year is a valid reason that the final

TDS liability is discharged at the end of the year. In such case it would be considered as being devolved within the prescribed timelines.

Relying on judicial precedents, including CIT v. Enron Expat Services Inc. (Uttarakhand HC) and Vinons v. ITO (Mumbai ITAT), the Tribunal in the case of **THE GREAT EASTERN SHIPPING CO.LTD Vs DCIT, TDS [2024-VIL-1683-ITAT-MUM]** also ruled that interest under Section 201(1A) could not be imposed for shortfalls rectified within the financial year.

5. Double claim of interest on House property u/s 24(b) and 48 allowed before 1st April 2024, i.e. before AY 24-25

The amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head "Income from house property" under section 24 of the Act.

Further Section 48 of the Act, inter alia, provides that the income chargeable under the head "Capital gains" shall be computed, by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.

It was observed that some assessees claimed double deduction of interest paid on borrowed capital for acquiring, renewing or reconstructing a property. Firstly, in the form of deduction from income from house property under section 24, and in some cases the deduction was also being claimed under other provisions of Chapter VIA of the Act. Secondly while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement under section 48 of the Act.

In order to prevent this double deduction, a proviso after clause (ii) of the section 48 as inserted so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA. This amendment is proposed to take effect from the 1st day of April, 2024 and applied in relation to the assessment year 2024-25 and subsequent assessment years.

However, what about the periods before that? The defenses for claiming double deduction are as follows –

1. There are favorable judgments, including CIT v. K. Raja Gopala Rao and CIT v. Mithlesh Kumari which allows interest as part of the cost of acquisition.

2. Section 24(b) and section 48 operate under different heads of income, permitting claims under both.

3. Additionally, the Finance Act, 2023 introduced a provision explicitly disallowing such deductions under section 48 from April 1, 2024, confirming the absence of such restriction for earlier periods.

4. Following the principle of beneficial interpretation as laid down in CIT v. Vegetable Products Ltd. by the Supreme Court, the ITAT in the case of **DCIT 3(2)(1) Vs MR. NEVILLE TULI [2024-VIL-1671-ITAT-MUM]** ruled in favor of the assessee, allowing the indexed interest cost deduction under section 48.

6. AMP Expenses allowed u/s 37... even incase it benefitted Group Co./ director

Advertisement, Marketing, and Promotion (AMP) expenses may enhance the brand value of products of a group Company, owned by directors. as well as the company rendering such services. Can it be disallowed u/s 37 of Income Tax Act as say personal benefit to the director.

The ITAT Bangalore in the case of **THE DY. COMMISSIONER OF INCOME TAX Vs SARASOULE PVT LTD [2024-VIL-1674-ITAT-BLR]**, allowed such AMP expenses incurred by the assessee due to the following –

1. AMP expenses were wholly and exclusively for business purposes, satisfying the conditions of section 37(1)

2. Incidental benefits to a third party (group Co/the director) do not justify disallowance if the expenditure promotes the assessee's business.

3. Commercial expediency governs such deductions.

7. Pan 2.0 – Precursor to Income Tax Act Revamp

PAN will serve as a universal identifier across government digital systems, as announced in the Union Budget 2023. To take this forward, the Cabinet Committee on Economic Affairs (CCEA) approved the Income Tax Department's Permanent Account Number (PAN) 2.0 project. The salient features are as follows -

A. PAN-related services are currently spread across three portals (e-Filing, UTIITSL, and Protean e-Gov).

B. The PAN 2.0 Project will unify all PAN/TAN services on a single ITD portal, covering allotment, updates, corrections, online PAN validation, AADHAAR-PAN linking, PAN verification, e-PAN requests, and re-print requests.

C. TAN can be searched with PAN and vice-versa possibly after this merger.

D. PAN allotment, updation, and correction will be paperless and free, with e-PAN sent to the registered email.

E. The PAN card under PAN 2.0 will feature an enhanced dynamic QR code, displaying the latest PAN data. PAN holders with old cards can apply for a new one with a QR code.

F. Strengthening anti-evasion measures: The integration of PAN as a common identifier for financial transactions and its linkages to other regulatory systems will strengthen India's ability to detect and prevent tax evasion. For several businesses, this ensures level playing field by holding fraudulent entities accountable.

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