

# Direct Tax Vista

Your weekly Direct Tax recap

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## **1. Finally, some relaxation to Charitable Organisations under Income Tax; ITR-7, 10B & 10BB for AY 23-24 deadline extended, much ahead of time**

Income Tax Compliance for Charitable Organisations have been completely overhauled since the last few years. It all started with new online registrations for all charitable Organisations and requirement of renewal of registrations. Every budget has seen upheavals in the norms related to trusts. The Hon'ble Apex Court also added to the bandwagon by declaring specific incomes which may or may not be exempt in the case of trusts in the back-to-back judgements 2nd half of 2022, in the case of Ahmedabad Urban Development Authority and New Noble Education Society. In view of the significant amendments made to the taxation of trusts over the past few years, revised audit report in Form No. 10B and Form No. 10BB have been notified vide Notification No. 7 of 2023 dated 21.02.2023. Form No.10B and Form No. 10BB requires the auditor to bifurcate certain payments or application in electronic modes and non-electronic modes. Various other amendments were introduced in the new Forms 10B and 10BB, significantly altering the requirements for reporting. These changes affect all trusts, irrespective of their income. Form 10B now contains 49 clauses and 29 schedules, while Form 10BB has 32 clauses and 6 schedules. Moreover, ITR-7 has been modified to include new schedules, demanding historical data and detailed breakdowns. The introduction of these forms was making life difficult for these organisations as well as consultants and auditors, particularly for NGOs without dedicated resources. One major challenge stemmed from the non-availability of utility for Forms 10B and 10BB. Although the utility for Form 10B had been released online, Form 10BB's offline utility remained unavailable. This posed a significant hurdle, as forms had to be filled manually. With limited time available, the trusts

and NGOs faced a daunting task. Furthermore, Form 10BB could only be filed online, which was impractical for handling substantial data.

Not very many date extensions under Income Tax Forms filing deadlines happen much before the last day. However, in case of trusts and charitable institutions, the CBDT has been more thoughtful and with around two weeks in hand, announced Vide Circular No. 16/2023 dated September 18, 2023 invoking Section 119, an extension in the deadline for filing Form 10B/10BB and ITR-7 till October 31, 2023 and November 30th 2023 respectively. Delay in compliance in filing the ITR and Audit reports of trusts and charitable institutions could have severe consequences, including the disallowance of exemptions under section 11. Hence representations were made by various organisations and the CBDT relented.

## **2. Deductibility of interest on loan u/s 57 where loan amount is reinvested in FDs earning lower interest**

Interest expended on loans taken from relatives and invested in fixed deposits cannot be disallowed u/s 57 on the ground of non-existence of nexus between loan taken and applied and interest earned u/s 56, in case a nexus is shown between FDs made and loan taken. In case the AO alleges non-existence of nexus still, the burden of proof has to be on him. At best the expenditure can be restricted to the extent of income earned and no excess claim towards the difference in the interest paid and interest received may be allowed.

Therefore, for taxpayers it is important that the nexus should be established vide Fund flow statement and movement in FD account and loan account, as was upheld in a similar matter in the case of D D & CO. Vs THE ASST. COMMISSIONER OF INCOME-TAX [2023-VIL-1224-ITAT-MUM].

## **3. Unsold flats to be considered for deemed rent under Income from House Property from date of CC... but Municipal Value to be considered as Annual Letting Value**

It is now reasonably settled that rental income received from unsold portion of the property constructed by the Assessee Real Estate Developer is assessable as income

from house property. However, the question is that whether the Annual Letting Value should be considered immediately after receipt of the CC or should there be a cooling period. Section 23(5) of Income Tax Act was amended vide Finance Act 2017 and provides that where any flat is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be NIL. The law is also amended to recognise that it is not possible for real estate developer who wants to sell its unsold stock also to let it out since the let out property cannot be sold by the developer. Further, it is not possible for the builder to let out the property immediately after the project is complete or to sell the same as soon as the occupation certificate is obtained.

However, it is a cardinal principle of the interpretation that the normal presumption with respect to an amendment is that is applicable prospectively unless and until specifically stated otherwise. The logic behind such as interpretation is that the law should govern current activities; i.e. to say "lex prospicit non respicit", which means that "The Law looks forward and not backward." Hence, the amendment in Section 23(5) of Income Tax Act was also considered not applicable for period earlier to AY 18-19 as held in the case of DIMPLE ENTERPRISES Vs DCIT, CENTRAL CIRCLE 4 [2023-VIL-1225-ITAT-MUM].

One silver lining for the assessee in the matter is that the estimated income @8.5% of ALV would be considered on the Municipal Value and not the investment / construction cost.

#### **4. Notice u/s 148 not valid while assessment is on... but replies made and considered will be an 'opinion' of the AO**

Every tax notice should be replied on merits as well as on legal issues. This is a practical suggestion to all taxpayers and it does help them in most cases. Income Tax Assessments are further complicated by more and more notices by the AOs, which sometimes overlap and as the asseeses keep replying to them, the case keeps

on building; This build up of the case may be used going forward for the benefit of assesses. No notice u/s.148 of the Income Tax Act could have validly been issued by the A.O during the pendency of the assessment proceedings. However, incase notice u/s 148 was issued during the pendency of assessment u/s 143(3) and still the assessee, in compliance with the said notice, filed his return of income in compliance thereto and the AO went ahead and considered the reply while framing the order u/s 143(3), It cannot be alleged that an income has escaped assessment wherein the same was considered in the Order u/s 143(3). Incase escapement of income is thereafter alleged, it would be considered as disturbing a concluded assessment of an assessee based on a "change of opinion". The same was held in the landmark judgment of the Hon'ble Supreme Court in the case of CIT, Delhi Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) and was followed by The ITAT Raipur in the case of SHRI VIJAY TONDON Vs THE INCOME TAX OFFICER [2023-VIL-1221-ITAT-RPR].

## **5. Commercial Expediency tested u/s 37 of Income Tax Act**

Multiple assessments are framed by disallowing expenses u/s 37 of The Income Tax Act. The Raipur Tribunal continues to disallow Puja Expenses In the case of M/s ALOK FERRO ALLOYS LTD Vs THE DY. COMMISSIONER [2023-VIL-1211-ITAT-RPR] again after another similar disallowance was reported in DTV 74 last week.

In another judgement, a percentage of cost of sales tools or other expenses spent by a assessee which is actually used at the dealer's premises is allowable u/s 37 of the Act as held in the case of HONDA MOTORCYCLE AND SCOOTER Vs ACIT, CIRCLE 1 (1) [2023-VIL-1212-ITAT-DEL].

Further even If Assessee cannot submit that royalty expense is revenue in nature and same is disallowable under section 37 of the Act, then depreciation should be allowed on it as held by The Hon'ble Supreme Court in the case of Honda Sael Cars India Ltd. (2019) 101 Taxmann 322 (SC) and relied upon in the case of CONTINENTAL AUTOMOTIVE COMPONENTS INDIA PVT. LTD Vs THE DEPUTY COMMISSIONER OF INCOME TAX [2023-VIL-1208-ITAT-BLR].

## **6. Broadcasting or tournament rights are not copyrights**

In the absence of any corresponding change into DTAA in terms, the unilateral amended of The Income Tax Act would have no application. Hence, even after the amended of Section 9(1)(vi) of The Income Tax Act by inserting/amending Explanation, broadcasting right would not be considered as a royalty. Following earlier precedents, the same was again held in the case of CRICKET AUSTRALIA Vs ACIT (INTERNATIONAL TAXATION) [2023-VIL-1197-ITAT-DEL], that a broadcasting right not the same as copyright – there is a difference. Even the payment for tournament fees and reimbursement of dinner tickets received Are not in nature of Royalty.

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