

## 4<sup>th</sup> INCOME TAX DIGEST

- ❑ **Pan 2.0** – Universal Identifier
- ❑ AMP Expenses benefitted Group Co./ director
  - ❑ Form 67 is directory and not mandatory
  - ❑ Case u/s 68 ignoring documentary evidence
  - ❑ TDS on salary paid at the end of the year
  - ❑ Double claim of interest on House property



### Team Tax Connect

E-Mail - [info@taxconnect.co.in](mailto:info@taxconnect.co.in)

Call - +91 70033 84915

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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 unified from currently spread 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.

## 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.

**TDS u/s 192 on salary can be adjusted and paid at the end of the year**

**incase indeterminable earlier... without interest**

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.

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.

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 after AY 22-23), there was no justification for not allowing the credit for FTC.

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.

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.

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

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.

## 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]**.



# THANK YOU



## Team Tax Connect

E-mail-  
[info@taxconnect.co.in](mailto:info@taxconnect.co.in)

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