

Income Tax:

E-Verification by 31st Dec; TDS defaulter; High Seas sale; ESOP; 1/2 Residential Units; Pre-commencement Interest; Domestic Transfer pricing

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ITR/ ITR-U

The Income Tax Dept has sent SMS and emails to taxpayers and non-filers where it has identified mismatch between transactions reported in Annual Information Statement (AIS) and income disclosed in ITRs for the financial years 2023-24 and 2021-22. This campaign has also targeted individuals having taxable income or significant high-value transactions reported in their AIS but have not filed ITRs for the respective years.

Taxpayers can file their revised or belated ITRs for FY 2023-24. The last date to file these revised or belated ITRs is December 31, 2024. For cases pertaining to FY 2021-22, taxpayers can file updated ITRs by the limitation date of March 31, 2025.

Additions cannot be made for TDS defaults by merely unearthing a non-deduction or non-payment... It should be seen whether the said recipients were subjected to tax or not

Proviso to Section 201(1) of IT Act requires that assessee cannot be considered as being in default incase the deductee has paid taxes on the said amt to the Govt. by including the amt in his ITR

Additions cannot be made for TDS defaults by merely unearthing a non-deduction or non-payment. Incase an assessee has made payments to various parties and claimed the expenditure in its books of accounts, with the recipients' names and PAN details available, then it is the responsibility of the Assessing Officer as well as the assessee to verify whether the said recipients of the amounts were subjected to tax or not.

It has to be found out whether the recipient of the claimed expenditure has paid the due taxes or not. The assessee should file all necessary evidence as was held **BHARGAVI MARKETERS Vs THE INCOME TAX OFFICER [2024-VIL-1795-ITAT-HYD]**

High Seas Sales are non-speculative transactions

In case of high seas transaction there is physical delivery of goods by the original seller to the ultimate buyer, and therefore such transactions does not fall within the sweep of the definition under section 43 (5) of the Income Tax act.

Section 43(5) of Income Tax Act specifies that *"speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the **actual delivery or transfer of the commodity** or scrips:*

Following the ratios laid down by the earlier decisions, it was decided in the case of **EMPIRE MULTITRADE PRIVATE LIMITED Vs DCIT-12(2)(1) [2024-VIL-1783-ITAT-MUM]** that the transaction of purchase and sale undertaken by the assessee when goods are on High Seas, do not amount to being speculative in nature.

ESOP Expenses are allowable u/s 37(1) of Income Tax Act

Payments for ESPOs happen in different forms and **ESOP expenses should not be regarded contingent or notional** and it should be allowed as deduction u/s 37(1) of the IT. Act as was held in the cases of of DCIT v Accenture Services P Lid [ITA No. 4540/M/08 order dated 23" March 2010] and Nordisk India Private Limited v DCIT -12(2) (ITA No. 1275/Bang/2011) (Bang Trib). The same was upheld in the case of **GOLDMAN SACHS (INDIA) SECURITIES PVT LTD Vs THE NATIONAL FACELESS ASSESSMENT CENTRE, DELHI [2024-VIL-1784-ITAT-MUM]**.

One residential Unit Vs Two Residential Units Vs Residential Unit

By virtue of The Finance (No. 2) Act, 2014 [hereafter 'the Finance Act, 2014'], an amendment had been brought in Section 54F of the Act, whereby the words 'a residential house' had been replaced with 'one residential house', and thus, the legislature had clarified that the intention was always to allow exemption in respect of one residential house only. Where an assessee purchases two flats which are situated adjacent to each other or side by side and the flats were purchased with intention of treating as one, it would be treated as 'one residential unit'. However, in this case, it is an undisputed fact that both the flats purchased by the assessee were on two different storeys and/or were not adjacent to each other and/or cannot be joined to form one dwelling unit, they would be considered as 'two residential units'. The same was laid down in the case of **MRS. KAMLA AJMERA Vs PR. COMMISSIONER OF INCOME TAX [2024-VIL-241-DEL-DT]**.

Further In the case of **SANDEEP HOODA Vs PR. COMMISSIONER OF INCOME TAX-7, DELHI [2024-VIL-246-DEL-DT]**, the question before the Court was that whether a structure can be considered as a makeshift arrangement or a residential house, Incase the structure consists of plywood rooms with no electricity or water connection, and a vast, uninhabited land, even though in a rural area.

Interest on FD given for Bank Guarantee – Revenue or capital receipt?

A. Interest at pre-commencement stage is a revenue receipt incase idle or surplus funds are parked in FDs and interest generated thereon - **Tuticorin Alkali Chemicals and Fertilizers Ltd. Vs. CIT, (1997) 227 ITR 172 (SC).**

B. Interest at pre-commencement stage is a capital receipt incase assessee receives any amount which is inextricably linked with the process of setting up of its plant & machinery, like providing BGs for the same - **CIT VS. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC)**

Domestic transfer pricing: Specified Domestic transaction to exclude payments made u/s 40A(2)(b); Inter-unit comparison of net profit in these GST times

Specified Domestic transaction to exclude payments made u/s 40A(2)(b)

Section 92BA(i) was deleted w.e.f. 1.7.2017 and before deletion required that "specified domestic transaction" includes "**any expenditure in respect of which payment has been made or is to be made to a person referred to Section 40A(2)(b)**". The omission of a particular provision in a statute would not save the acts done earlier and therefore the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed [**KOHLAPUR CANESUGAR WORKS LTD. v. UNION OF INDIA reported in AIR 2000 SC 811**]

Domestic transfer pricing: Specified Domestic transaction to exclude payments made u/s 40A(2)(b); Inter-unit comparison of net profit in these GST times

Addition due to difference in profitability of different Units

merely low profit by itself is not a valid criterion for not accepting profit shown in books of account. There may be various reasons for it like –

- A. Higher depreciation due to newer technologies installed
- B. Higher labour, fuel, power, etc expenses

For substantiating such an allegation, the AO has to -

- A. Either point out any discrepancy in the books of account
- B. Or reject the books of account u/s 145 of the I. T. Act
- C. Or has to bring on record a specific instance of under reporting or over reporting of revenue
- D. Or has to point out an instance of bogus or excessive claim of any expenses or under reporting of expenditure.

This was upheld in the cases of CIT Vs Poonam Rani 5 Taxmann.com 76 (Del), CIT Vs. Mohd Umer 101 ITR 525 (Patna) and now was again upheld in the case of **A.C.I.T. Vs M/s PRAG INDUSTRIES (INDIA) PVT LTD [2024-VIL-1788-ITAT-LCK]**

THANK YOU



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This PPT is merely for training purpose and should be construed as such. The matter should not be used for any professional purpose