3rd INCOME TAX DIGEST

- Income Tax Act Revamping - Update
- Deductibility of Bank Foreclosure Charges
- Date of Initiation of proceedings
- S69A unexplained money as 'Income from Other Sources'
- Questioning TRCs
- Different interpretations of source & resident jurisdictions

TAXCONNECT
EXCELLENCE IN LEGAL DELIVERABLES

Team Tax Connect

E-Mail - info@taxconnect.co.in

Call - +91 70033 84915

[MUMBAI BANGALORE KOLKATA DELHI]

Bank Fore-closure charges are deductible expenses u/s 37

It is a norm to shift loans from one bank to other due to lower interest rates. However certain pre-closure charges/ premiums need to be paid in the process. The question before the Hon'ble Madras High Court in the case of **M/s EIH ASSOCIATED HOTELS LIMITED Vs COMMISSIONER OF INCOME TAX – I [2024-VIL-206-MAD-DT]**, was whether pre-closure premium can be claimed as revenue expenditure under Section 37.

Following Delhi High Court in '**Gujarat Guardian**' it was ruled that -

1. Prepayment premium paid for restructuring loans was a commercially expedient business decision aimed at **reducing interest costs and ensuring financial benefit**.

2. It constitutes an allowable revenue expenditure under Section 37(1), aligning with established jurisprudence, such as the Delhi High Court decision in Gujarat Guadian Ltd.

3. The foreclosure charges **represented additional interest and not a capital expense**, as argued by the revenue

"Date of initiation" for calculating time barring period of Issuing Order for penalty u/s 275

In terms of Section 275(1)(c) of the Income Tax Act, no order imposing penalty could be passed after expiry of **six months from the end of the month in which the action for imposition of penalties was initiated.**

Consider that the AO made reference for penalty proceedings on 25.09.2023 to the JCIT range, but the JCIT issuing the show cause notice on 04.08.2024 and the Order on 15.11.2024. Whether the "date of initiation of penalty proceedings" is 25.09.2023 when the Assessing Officer's made reference for penalty proceedings to JCIT or 04.08.2024 when the JCIT issued the show cause notice.

The beginning of the action for imposition of penalty had initiated with the AO determining that there was a cause for such imposition on 25.09.2023 as was held in **COMMISSIONER OF INCOME TAX (TDS)-2 DELHI Vs TURNER GENERAL ENTERTAINMENT NETWORKS INDIA PVT LTD [2024-VIL-209-DEL-DT].**

Unexplained money cannot be declared as "income from other sources" until the source is clear

Incase during a search/ survey, cash is seized and assessee has no answer, a way thought out can be is to disclose under the head 'income from other sources' to protect oneself from the rigours of Sec 69A r.w.s. 115BBE of The Income Tax Act, and a tax rate of 60%. To escape the rigours of Sec 69A and 115BBE, the assessee should

A. Have contemporaneous demonstrable evidences for the source

B. Identify genuine payers of such moneys

If the AO does not verify such contemporaneous demonstrable evidences for the source and Identify genuine payers of such moneys, then even after the assessment, the PCIT can invoke Sec 263 as was held for revision of the order being erroneous and pre-judicial to interest of revenue as was held in the case of **SHRI VENKATA KRISHNA TATINENI Vs ASST. COMMISSIONER OF INCOME TAX [2024-VIL-1588-ITAT-HYD].**

TRCs cannot be questioned until the Department has strong corroborative evidence

The question in the case of **TRICENTIS GMBH Vs THE DCIT [2024-VIL-1558-ITAT-DEL]** was whether the receipts from sale of software licenses to Indian customers is taxable in India as business income. **In light of the decision by The Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. it was held that it was not taxable in India**. Once this was established, it was questioned whether the assessee has set us business in a low tax Country only for treaty shopping.

Here it was held that where an assessee's status as a tax resident of a Country has been duly recognized by the Revenue Department of that Country and authorities while issuing Tax Residency Certificates (TRC) on year-on-year basis, they cannot be denied treaty benefits. **Unless the department brings on record strong corroborative evidence to establish that the assessee is a sham/shell company having no legal or commercial substance, the sanctity of the TRC cannot be doubted.**

TAXCONNECT
EXCELLENCE IN LEGAL DELIVERABLES

Where interpretation of country of residence about applicability of a treaty provision is not the same as that of source jurisdiction, credit of taxes cannot be declined.

Incase of professionals rendering services outside India, Article 12 of the DTAA provides that income from professional services or other activities of independent characters would be taxable in the resident country. However, **clause 4 of the Article 12 provides that such payments would not constitute 'fee for technical services' only if such payment is made to an individual** for carrying out independent professional services referred to in Article 14. **Hence Japan Authorities consider that income earned by a 'firm' of lawyers in source Country would be taxable in that Country and have withheld tax.**

DTAA provisions don't require that state of residence eliminate the double taxation in all cases where state of source has imposed its tax by applying to an item of income, a provision of convention that is different from what the state of residence considers to be applicable. Therefore, in all cases in which interpretation of residence country about applicability of a treaty provision is not the same as that of source jurisdiction about the provision and yet the source country levied taxes whether directly or by way of tax withholding, tax credit cannot be declined in the country of residence as was held in the case of **ACIT Vs AZB AND PARTNERS [2024-VIL-1553-ITAT-MUM]**

1. **Scrapping of the Old Regime totally and rationalising the Income Tax slabs under the new regime -** The Govt. has come out with an analysis that on an income of Rs.7Lakhs, an individual had to pay Income Tax of Rs.29,000 approx in FY14-15 after a deduction towards investment and Mediclaim and under the new tax regime, they have to pay NIL on the same level of Income today.

It is a fact that today under the new tax regime, they have to pay NIL on the same level of Income. However, considering the Cost of Inflation of approx. 6% pa, the present value of Rs.7 Lakhs income of FY 14-15 is Rs.12.50 Lakhs today and on which the tax is Rs.90,000 in the new regime in FY24-25.

Hence, the Government should consider and make the new regime as the only regime as the Income Tax Act goes for a comprehensive review on 1st Feb 2025. However, they must also consider easing out the tax rate in the new regime.

2. **Ease of Compliance**

The revamping should be designed in a way that makes compliance way more simpler for both individuals and businesses operating in India. With different deadlines for filing income tax returns, TDS return, tax audit, transfer pricing etc, there are chances of missing the dates, leading to penalties.

Unification of dates should be done to the best extent possible for all assesses.

THANK YOU

Team Tax Connect

E-mail-
info@taxconnect.co.in

Call:
+91 70033 84915

This PPT is for educational purpose only and shall not be construed as an advise

[MUMBAI BANGALORE KOLKATA DELHI]