INCOME TAX DIGEST

- ❑ - RENTING INCOME – PGBP or HP
- ❑ - No TDS u/s 195 on Foreign agents commission incase they are operating completely out of India
- ❑ - Procedure for Invoking re-opening u/s 147
- ❑ - Doctrine of Merger of Order of a Higher Court with the Assessment Order
- ❑ - Order issued on the basis of 'non-est' notice is without jurisdiction

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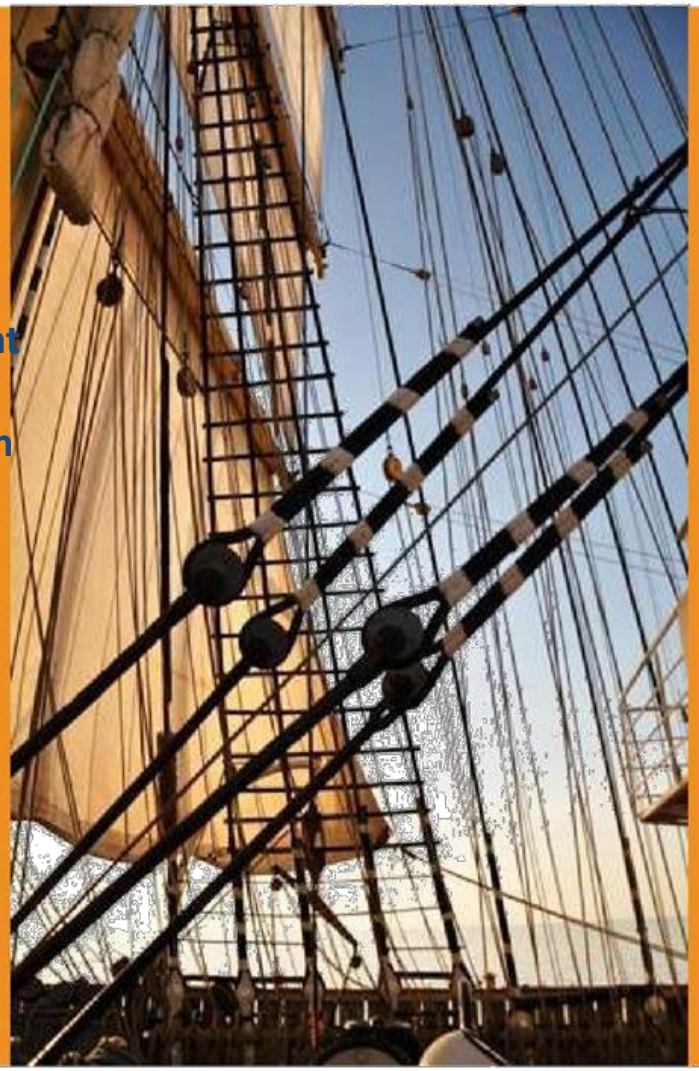

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Income from Renting under 'House Property Income' or 'PGBP'

1. Deductions on **Renting treated as HP** – 30% SD, Interest on construction, municipal taxes paid, etc; Deemed Income taxable even incase property is vacant

2. Deductions on **Renting treated under PGBP** – expenses for maintaining, depreciation, can go upto 50% generally; Deemed Income not-taxable incase property is vacant

3. **FA 2024 added 3rd Explanation to Sec 28** – Income from renting residential property always treated under HP **w.e.f. 01-04-2025**

4. **For period before this** - **NATIONAL LEASING LIMITED Vs ACIT[2024-VIL-192-BOM-DT]**

i. **Primary business activity to be seen** – relied on Supreme Court's judgment in M/s. Chennai Properties & Investments Ltd

ii. **Principle of consistency to be seen** - The principle of consistency as established in M/s. Radhasoami Satsang (SC) to be relied upon

No TDS u/s 195 on Foreign agents commission incase they are operating completely out of India

Incase foreign agents are –

i. Based out of India

ii. Are rendering services out of India

iii. Are operating exclusively outside India

iv. do not have do not have any establishment in India,

Then **no tax liability arises or accrues in India**. Section 195 of the Act applies to Commission to foreign agents **only if payment made to the non-resident is taxable in India**.

The Hon'ble Supreme Court ruling in CIT vs. Toshoku Ltd. (1980) 125 ITR 525 (SC), the CIT(A) concluded that commission payments to foreign agents, who operate exclusively outside India do not attract tax liability in India.

THE ACIT Vs INDUCTOTHERM (INDIA) PVT LTD [2024-VIL-1492-ITAT-AHM] observed accordingly

Procedure for Invoking re-opening u/s 147

Re-openings under Section 147 cannot be invoked based on alleged unexplained cash credits and subsequent addition under Section 68, on alleged un-explained loans or share-premium, when the transactions were already scrutinized under Section 143(3) in the original assessment. For a reopening under Section 147, the following must be satisfied –

a. There must be a "**reason to believe**" that income has escaped assessment
b. The "reason to believe" must be based on **tangible material**
c. There should not be a **mere change of opinion**
d. There should not be **incorrect factual premise** justifying reopening.
e. The assessing officer has to obtain the **sanction of the specified authority u/s. 151** of the Act before issuing a reassessment notice.
f. The assessing officer is also required to afford an **opportunity of hearing** in terms of decision of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. V. Income Tax Office (2003) 1SCC72.

Referring to the Supreme Court's ruling in CIT v. Kelvinator [2010] 187 Taxman312(SC), the ITAT in the case of TEAM GLOBAL LOGISTICS PVT LTD Vs DCIT [2024-VIL-1491-ITAT-MUM], held that **reopening based on previously examined issues during scrutiny assessment constitutes a change of opinion**, which is not permissible.

Doctrine of Merger of Order of a Higher Court with the Assessment Order

Incase an ITAT or Higher Court passes an order for an assessment year, an identical issue again cannot be raised by the Pr.CIT by invoking his powers u/s 263 of the Act as the order of the AO as well as the CIT(A) in 147 proceedings in subsequent appeal gets merged with the order of the ITAT. This is the Doctrine of Merger.

Hence, after this merger, the "issue" attains finality. The Pr.CIT can of-course revise u/s 263 on a different issue. The same was held by The ITAT Chandigarh in the case of **THE DCIT Vs VALCO INDUSTRIES LTD [2024-VIL-1490-ITAT-CHD].**

Order issued on the basis of ‘non-est’ notice is without jurisdiction

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The ITAT Delhi in the case of ‘**Sh. Mukesh Kumar vs. ITO**’ in ITA No. 2358/Del/2012 vide order dated 12.06.2015, held that the notice as issued u/s 148 by the non-jurisdictional Assessing Officer is non-est in the eyes of law and Assessing Officer will not get valid jurisdiction, even though the case is transferred under the provisions of Section 127 of the Income Tax Act, 1961. Hence a case where notice has been issued by a non-jurisdictional Assessing Officer and the assessment having been framed by the other Assessing Officer is non-est in law.

The Hon’ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349ITR 271 (All.) held that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid.

The same ratio is upheld even by The **ITAT-Chandigarh in the case of THE DCIT Vs SHRI MANJEET SINGH** [2024-VIL-1494-ITAT-CHD].

THANK YOU

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