



Luthra *and* Luthra

LAW OFFICES INDIA

DIRECT TAX UPDATES

NEWSLETTER

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We extend our best wishes to the recipients of this newsletter.

In the November Edition of the Luthra and Luthra Law Offices India – ‘Direct Tax Monthly Newsletter’, we cover some of the pertinent developments in the Direct tax law space over the last month.

I. INCOME TAX

Supreme Court

a. Shah Originals v. Commissioner of Income Tax-24, Mumbai, decided on November 21, 2023.

The Supreme Court while interpreting the provisions of Section 80 HHC of the Income Tax Act, 1961 ('the Act'), *inter alia*, held that the same enables deduction to the extent of profits derived by the assessee and, therefore, the profit from exchange fluctuation is independent of export earnings and can't be claimed as deduction.

b. CIT v. Bharti Hexacom Ltd., decided on October 16, 2023.

The Supreme Court, while referring to the statutory scheme and the structure of the Act on the characterisation of capital expenditure, *inter alia*, held that

licenses are to be identified as intangible assets and are capital in nature. Additionally, the Court also opined that for the provisions of Section 35ABB of the Act to be attracted, it is necessary that the expenditure under consideration is capital in nature and is incurred for acquiring or obtaining a licence which gives the right to the assessee to operate telecommunication services.

c. Deputy Commissioner of Income-tax, Central Circle v. Bharat Jayantilal Patel, decided on November 3, 2023.

The Supreme Court, dealing with a reopening notice issued by the AO on the ground that capital gains income had arisen to the assessee on the transfer of development rights in its land to a developer, dismissed the SLP. The Court, *inter alia*, held that since the assessee had merely granted a licence to permit construction on land to such developer but not given any possession in the land as contemplated under Section 53A of Transfer of Property Act, 1882, there was no transfer as per section 2(47)(v) of the Act to rise to any capital gain in hands of the assessee and, thus, impugned reopening notice was not justified

High Courts

a. PCIT v. M/S Dart Infrabuild (P) Ltd., decided by the Delhi High Court on 17 November 2023.

The Delhi High Court quashed the assessment order as the notice under Section 148 of the Act was improperly served due to it being sent to the old address of the assessee, even though the department was aware of the new address. The Court, *inter alia*, also observed that the assessment order, which has been framed without a notice being issued to the respondent or assessee under Section 143(2) of the Act, is unsustainable in law.

b. Mehra Jewel Palace Pvt Ltd v. PCIT, decided by the Delhi High Court on 13 October 2023.

The Court, in this case, has observed that according to the provision under Section 40A(2)(a), the AO has to form an opinion before recording a disallowance and that opinion has to be formed having regard to, factors including the legitimate needs of the business, the benefit derived, or

even the fair payment outgoing for services rendered.

c. Ganesh Dass Khanna v. ITO, decided by the Delhi High Court on 10 November 2023.

The High Court, *inter alia*, held that an extended period of 10 years would apply in serious tax evasion cases where there was evidence of concealment of income above Rs. 50 lakhs. The Court noted that if evidence of concealment of income of Rs 50 lakhs or more in a given period was found, the period for reopening the assessment was extended to 10 years.

d. PCIT v. Indus Towers Ltd, decided by the Delhi High Court on 31 October 2023.

The High Court, *inter alia*, held that merely because the loan processing charges were paid upfront but amortized over a period of five years, solely to be in consonance with the mercantile system of accounting, the deduction of the entire charges in a lump sum in the year in which they were paid could not be denied to the respondent or assessee.

e. Bhagwati Polyfill Pvt. Ltd. v. The Assistant Commissioner Of Income Tax, decided by the Gujarat High Court on 25 November 2023.

The Hon'ble Gujarat High Court, dealing with a case regarding the validity of reopening assessments based on reasons lacking a direct connection between the taxpayer and the disputed transaction, quashed the Income Tax notice due to the lack of tangible evidence and a valid reason to believe that income has escaped assessment.

f. Undercarriage and Tractor Parts (P.) Ltd. v. Dispute Resolution Panel-3, decided by the Bombay High Court on 12 September 2023.

The Bombay High Court, *inter alia*, held that the DRP could give directions only in pending assessment proceedings. Therefore, once the assessment order is passed, rightly or wrongly, the assessment proceedings end. Therefore, the DRP lacks any power thereafter to pass any directions contemplated under sub-section (5) of Section 144C of the Act.

g. Ramona Pinto v. Deputy Commissioner of Income Tax, decided by the Bombay High Court on November 9 2023.

The Bombay High Court, *inter alia*, held that, as per Section 45(4) of the Act, assuming that there was a distribution of capital assets upon dissolution of the firm, it is the firm and not the partner who has to pay.

h. Duraiswamy Kumaraswamy v. PCIT, decided by the Madras High Court on October 6 2023.

The Madras High Court allowed the Foreign Tax Credit (FTC) claim on the ground that filing Form-67 after filing of the Income Tax Return but before the issuance of an intimation shall amount to due compliance.

II. NEW CIRCULARS AND NOTIFICATIONS

a. Instruction No. 02/2023, dated 10-11-2023.

The Central Board of Direct Taxes (CBDT) prescribed the monetary limit of refund to attract provisions of Section 245(2) of the Act and has now clarified that the

monetary limit for applying provisions of the said section will be where the refund value is Rs. 10 lakhs or more.

b. Notification No. 99/2023, dated 20-11-2023.

The CBDT has notified the Deputy Director General (Tech Development Division), the Unique Identification Authority of India (UIDAI), Government of India to share information as Authority u/s 138 of the Act.

c. Income-tax (Twenty-Seventh Amendment) Rules, 2023.

The Board has notified the Income-tax (Twenty-Seventh Amendment) Rules, 2023. With amendments to the ITR -7, the trusts having any taxable income less than or more than Rs 2.50 Lakh will now be able to take benefit from the individual slab rate and no tax up to the basic exemption limit.

III. INTERNATIONAL TAX

Transfer Pricing

a. PCIT v. Qualcomm India Pvt Ltd, decided by the Delhi High Court on 18 October 2023.

Hon'ble Delhi High Court dealing with the case of the assessee which was a joint venture company of Bharti Infratel Limited, Vodafone Essar Limited, and Aditya Birla Telecom Limited and dealt with sharing the telecom infrastructure amongst various telecom service providers, excluded three comparables, namely Infobeans Technologies Ltd., Cybercom Datamatics Information Solutions Ltd., and Infosys BPO Ltd due to functional dissimilarity.

b. Vodafone Idea Limited v. CPC, decided by the Bombay High Court on 8 November 2023.

The Bombay High Court in this case, *inter alia*, held that the assessment order that was passed by the Faceless Assessing Officer after two years of the Dispute Resolution Panel (DRP) directions, was time-barred and cannot be sustained. The Court also recommended a detailed inquiry into the Faceless Assessing Officer's failure to act in accordance with the provisions of the Act.

Carbon Tax

a. Carbon Credit

Section 115BBG, inserted by the Finance Act, 2017, applicable from the assessment year 2018-19 in relation to carbon credits specifies that where the individual's income includes any income from the transfer of carbon credits, the same would be subject to taxation of 10 per cent, with no deduction being allowable as expenditures made for the same.

b. India's alternative to the EU's CBAM?

According to [reports](#), India is planning its own alternative to the EU's Carbon Border Adjustment Mechanism (CBAM) carbon tax, particularly for select products exported from India to European nations.

Indian officials will selectively levy a tax "applicable only on EU

exports affected by CBAM." The tax will thus remain within India and will be accounted for at the time of export, either through carbon credit or certification.

Others

a. Historic Vote at the UN

The United Nations (UN), following a resolution tabled by the Africa Group at the UN General Assembly, held a vote to decide whether to initiate the negotiation of a UN Framework Convention to strengthen international tax cooperation. The resolution that was passed with a decisive 125:48 majority and witnessed support from influential BRICS nations including India is being seen as a crucial step as it takes place against a backdrop of half a century of global tax standards having been controlled by the OECD.

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact Rubal Bansal , at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

The Team:-



RUBAL BANSAL

Partner

Email: - rbansal@luthra.com



PRAKHAR PANDEY



VISHWAJEET RAO