



**Luthra and Luthra**  
LAW OFFICES INDIA

**DIRECT TAXATION UPDATES – INCOME TAX LAW**

NEWSLETTER

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

In the April, 2024 Edition of the Luthra and Luthra Law Offices India – ‘Direct Tax Newsletter’, we have covered some of the pertinent developments in the field of Direct Taxation Law recently.

## I. INCOME TAX

### Recent Judgments by High Courts

a. ***Sunshine Capital Limited vs. Deputy Commissioner of Income Tax, decided by High Court of Delhi on 16th April, 2024***

The High Court of Delhi has disposed of the writ petition filed by the taxpayer wherein Assessing Officer (“AO”) failed to pass the assessment order within the statutory time period, in pursuance to the order of the Income Tax Appellate Tribunal (“ITAT”), where the matter was remanded to the AO for its fresh consideration. The said Court clarified the importance of strict adherence to timelines set by judicial orders and the limitations prescribed by law. It underscored the obligation of tax authorities to act promptly on directives from higher judicial bodies and highlighted the consequences of non-compliance.

b. ***Saksham Commodities Limited vs. Income Tax Officer, decided by High Court of Delhi on 09th April, 2024.***

The High Court of Delhi has *inter alia* held that the discovery of incriminating evidence in respect to a certain Assessment Year (“AY”) does not automatically provide the Income-tax Department, jurisdiction to begin an assessment under Section 153C of the Income-tax Act, 1961 (“**the Act**”) in relation to all AYs for a taxpayer. The Court observed that the finding of incriminating material for a given AY is not meant to generate a chain reaction or a cascading impact on all assessment years.



**c. M Tech Developers Pvt. Ltd vs. National Faceless Assessment Centre, decided by High Court of Delhi on 15th April, 2024.**

The High Court of Delhi has quashed the faceless assessment proceedings that began following the approval of the Resolution Plan under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). It was, *inter alia*, held that Section 31 of the IBC, binds all creditors of the corporate debtor, including the Central and State Governments or any other local authority to whom a debt is owed, prohibits them to take any action against the corporate debtor post approval of Resolution Plan. The Court further affirmed the principle laid down by Hon'ble Supreme Court in the case of **Essar Steel India Ltd. Committee of Creditors**<sup>1</sup> that “*once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were*”.

**d. Vodafone India Ltd vs. Deputy Commissioner of Income Tax, decided by High Court of Bombay on 19th March, 2024**

Recently, the Bombay High Court quashed the reassessment order because the approval for the same was given without application of mind. The Court delved into the procedural aspects of reassessment proceedings, focusing on the approvals granted under section 151 of the Act. The Court made an observation that granting of approvals mechanically, without thorough examination of the facts and legal considerations, raises concerns about the integrity and efficacy of assessment proceedings. The Court emphasized that the power to grant approval under Section 151 carries a corresponding duty to examine facts carefully.

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<sup>1</sup> Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531



e. ***Principal Commissioner of Income Tax vs Inderjit Singh Sodhi (HUF), decided by High Court of Delhi on 08th April, 2024.***

In a recent ruling, Hon'ble High Court of Delhi has settled the issue of taxability of interest on compensation received on compulsory acquisition of land and the interest on enhanced compensation received by the taxpayer. The court, *inter alia*, held that interest, whether on compensation or on enhanced compensation, shall be considered as income from other sources and shall be eligible to income tax.

f. ***Agra Portfolio Pvt. Ltd. vs Principal Commissioner of Income Tax, decided by High Court of Delhi on 04th April, 2024.***

High Court of Delhi has, *inter alia*, held that AO is not authorized to reject taxpayer's preferred method of share valuation under Section 56(2) (viib) of the Act and adopt a different method of valuation. The court, noted that while the AO has the right to question or reject the taxpayer's valuation report, however the statute does not give the AO the authority to independently evaluate the valuation of the shares using a valuation method other than the one chosen by the taxpayer.

## II. Recent Judgments by ITAT

a. ***Khushaal C. Thackeray vs ACIT, decided by Mumbai Bench of Income-tax Appellate Tribunal on 15th April 2024***

Recently ITAT Mumbai has, *inter alia*, held that the difference between the purchase cost and maturity proceeds on redemption of Non-Convertible Debentures ("NCDs") is the taxpayer's interest income, which is taxable as "*income from other sources*" rather than capital gains. The tribunal noted that capital gains on NCDs can only be realized if they are sold in the open market and the amount realized differs from the face value; however, in this case, the NCDs were not listed on a recognized stock



exchange and were surrendered by the taxpayer to the issuing company upon its maturity. As a result, the tribunal, *inter alia*, held that the premium upon redemption of NCDs is essentially interest and should be taxed as "*income from other sources*" rather than capital gains.

b. ***Mohd. Sarwar vs Income Tax Officer, decided by Hyderabad Bench of Income-tax Appellate Tribunal on 02nd April 2024***

The Hyderabad ITAT has allowed a taxpayers' appeal wherein the assessment order found that the taxpayer had "*under-reported*" his income and even issued a notice for the initiation of penalty proceedings on the same basis; however, the Income-tax department issued the final penalty order for "*mis-reporting*" of income rather than "*under-reporting*" of income. The tribunal, *inter alia*, held that "*if the Revenue authorities intend to charge the taxpayer for misreporting of income, the specific notice is required to be issued.*"

### III. RECENT NOTIFICATIONS AND LETTERS ISSUED BY CENTRAL BOARD OF DIRECT TAXES ("CBDT"):

a. **Notification No. 33/2024 F.No. 503/2/1986-FTD-I**

Several of India's Double Taxation Avoidance Agreement ("**DTAA**") with certain Organization for Economic Cooperation and Development ("**OECD**") member countries have a Most Favoured Nation ("**MFN**") clause, which provides that if, after signing/entry into force of India's DTAA with a country ("**first treaty**"), India enters into a DTAA with another country ("**second treaty**"), which is an OECD member, and the said second treaty provides either a "*beneficial rate of tax*" or "*restrictive scope of taxation*", then the first treaty should be treated similarly in terms of the said beneficial rate or restrictive scope of second treaty. In this context, the CBDT issued a circular on February 3, 2022 as well.

However, there were legal disputes over the application of the MFN clause. One of such controversy was whether a separate notification from India is required to accord benefit from the MFN clause or, if beneficial provisions in the second treaty is to be granted automatically?

This dispute was decided by the Supreme Court in the case of **Nestlé SA**<sup>2</sup>, which *inter alia* held that the MFN clause was not an automatically enforceable clause and that a separate notification is required in order to give favourable treatment to the second contract.

Thereafter, the CBDT has issued a Notification dated 19 March 2024, by exercising its powers under Section 90 of the Act, conferring lower tax rate of 10% under the India-Spain DTAA in accordance with the MFN clause therein. The said benefit has been accorded with reference to “royalty” and “FTS” payments based on the beneficial rate provided under the India-Germany DTAA.

The issuance of the said Notification is in line with the decision of Supreme Court in the case of Nestle (Supra) along with the view of CBDT as expressed in Circular dated 3 February 2022. However, it is pertinent to note that against the aforesaid decision of the Supreme Court in the case of Nestle, a review petition has been filed before the Supreme Court and the same is currently pending.

#### IV. Signing of India-Mauritius Protocol dated March 7, 2024

India and Mauritius have signed a protocol to amend their DTAA to align with the OECD's Multilateral Instrument (“**MLI**”) provisions to prevent treaty shopping by Multi-national

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<sup>2</sup> Assessing Officer Circle (International Taxation) vs M/s Nestle SA Civil Appeal Nos. 1420 of 2023



Corporations. The protocol includes (i) the substitution of preamble of India-Mauritius DTAA and (ii) the inclusion of the Principal Purpose Test (“**PPT**”) rule in India-Mauritius DTAA.

Vide the said protocol the existing preamble of the India-Mauritius DTAA has been replaced to expressly state that the purposes of India-Mauritius DTAA include not only the elimination of double taxation, but also the prevention of double non-taxation or reduced taxation, as well as the prevention of misuse of the India-Mauritius DTAA.

Furthermore, the Protocol includes the PPT rule, which states that a benefit under the India-Mauritius DTAA will not be granted in respect of an item of income if it is reasonable to conclude that obtaining benefit of the said treaty was one of the primary goals of any arrangement or transaction.





*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 Direct Tax in general), please feel free to contact Rubal Bansal, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2024. All rights reserved.*

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