



Luthra *and* Luthra

LAW OFFICES INDIA

DIRECT TAXATION UPDATES – INCOME TAX LAW

NEWSLETTER – MAY & JUNE, 2024 EDITION

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RECENT NOTIFICATIONS AND LETTERS:

- a) Notification s.o. 2103(e) [no. 44/2024/f.no.370142/10/2024-tpl], dated 24.5.2024**
- b) Circular no.7/2024 f.no. 173/25/2024-ita dated 25.05.2024**



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

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

INCOME TAX

As held by Hon’ble High Courts in the cases of:

a. BDR BUILDERS AND DEVELOPERS PRIVATE LIMITED vs ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-15, NEW DELHI (dated 01.05.2024)

The Hon’ble High Court of Delhi pronounced an important judgment, *inter alia*, on the distinction between a ‘change of opinion’ and ‘fresh tangible material’ for reopening assessments under the Income Tax Act, 1961 (“**the Act**”). The Court emphasized that the reassessment order must explicitly or implicitly express an opinion on the matter forming the basis of the alleged escapement of income to consider it a change of opinion. The Court held that if the assessment order is non-speaking or perfunctory, it may be challenging to attribute any opinion to the Assessing Officer on the issues raised in the reassessment proceedings.

Vide the said judgment, it was held that every attempt to tax escaped income cannot be thwarted by judicial intervention based solely on an assumed change of opinion. Additionally, the Court held that the presence of material that was either ignored or overlooked during the original assessment does not constitute a change of opinion, thereby, allowing for the valid reopening of assessments based on fresh tangible material. This judgment, *inter alia*, provides clarity on the legal principles governing the reopening of assessments and sets a precedent for future cases involving similar issues.

b. AKSHITA JINDAL vs INCOME TAX OFFICER WARD 54(1) DELHI & ORS (dated 01.05.2024)

The Hon’ble High Court of Delhi in this judgment answered the question whether the decision in the case of **Union of India vs. Ashish Agarwal (2022) 444 ITR 1** mandates an authority to reopen even concluded reassessment proceedings. The Hon’ble Court held that the judgment of **Ashish Agarwal (Supra)** neither intends nor mandates to open the reassessments proceedings which have already been concluded. Since in the present case, reassessment under Section 147 of the Act was already concluded, therefore, the Court quashed the notices issued under Section 148(A)(b) and Section 148 of the Act respectively and the impugned order passed under Section 148(A)(d) of the Act.



c. HEXAWARE TECHNOLOGIES LIMITED VS ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 15(1)(2), MUMBAI (dated 03.05.2024)

The Hon'ble High Court of Bombay decided on the issues related to the validity of a notice issued under Section 148 of the Act, on the absence of a Document Identification Number (DIN) and the expiration of the statutory time limit for issuing the notice. The Hon'ble Court held that the impugned notice is invalid and bad in law, in the absence of DIN and being issued by the Jurisdictional Assessing Officer (JAO) as the same was not in accordance with Section 151A of the Act. The judgment highlights the importance of compliance with procedural requirements and statutory limitations in income tax matters.

d. ASHOK KUMAR MAKHIJA vs UNION OF INDIA (THROUGH SECRETARY) AND ORS. (dated 07.05.2024)

The Hon'ble High Court of Delhi, *inter alia*, held that the authority for issuing reassessment notices should have been in accordance with the specified authorities outlined in Section 151 of the Act, such as, the Principal Chief Commissioner or Principal Director General. Since the said notices were issued by the Principal Commissioner of Income Tax, Delhi-10, who did not fall within the prescribed specified authorities, they were held as being invalid. This ruling sets a precedent regarding the issuance of notices under the Act, specifically Section 148 and 148A(b), and the authority required for such actions. The judgment emphasizes the necessity for adherence to the specified authorities outlined in the Act, as stated in Section 151 of the Act.

e. M/S POOJA TRADING CO. vs DEPUTY DIRECTOR OF INCOME TAX (INV) & ANR. (dated 08.05.2024)

The Hon'ble High Court of Delhi, *inter alia*, decided on the legal provisions related to the freezing of bank accounts under the Act. The Court held that it is mandatory for the income tax authority to strictly adhere to the provisions of Section 132(8-A) of the Act, while freezing the bank accounts of a taxpayer i.e., bank accounts can be frozen only up to sixty days. The judgment serves as a crucial reminder of the statutory safeguards in place to prevent arbitrary actions of the Income-tax authorities and underscores the importance of upholding procedural fairness and legal boundaries in such matters.



f. RAJ SHEELA GROWTH FUND (P) LTD. Vs INCOME TAX OFFICER, WARD – 21(1), DELHI (dated 08.05.2024)

The Hon'ble High Court of Delhi has, *inter alia*, held that a non-jurisdictional Assessing Officer cannot proceed with the assessment in the absence of a transfer order under Section 127 of the Act. The court emphasized the importance of adhering to the legislative mandate of Section 127 of the Act, which governs the transfer of cases based on public interest and administrative convenience. The Hon'ble Court observed that the transfer of a taxpayer's case must be done through a valid order passed under Section 127 of the Act to ensure clarity, fairness, and adherence to legal procedures in tax assessments procedures. This landmark ruling establishes a crucial legal precedent with respect to the jurisdiction of an Assessing Officers and the need for adherence to proper transfer orders under Section 127 of the Act. Moreover, the ruling addresses the potential confusion and chaos that may arise from overlapping jurisdictional claims by different Assessing Officers, underscoring the necessity for clear delineation of jurisdictional boundaries.

g. THE COMMISSIONER OF INCOME TAX-INTERNATIONAL TAXATION-3 vs THE BANK OF TOKYO-MITSUBISHI UFJ LTD. DATED 28.05.2024

The Hon'ble High Court of Delhi, *inter alia*, held that the interest received by Indian Permanent Establishments (“PE”) on deposit maintained by it with the head office/overseas branch of parent entity is not taxable in India. The Court held that the application of the Explanation to Section 9(1)(v) of the Act, and highlighted the exception made in Article 7 of the India US Double Taxation Avoidance Agreements (“DTAAs”) for banking institutions. Further, the Hon'ble Court held that no person can profit from itself, reinforcing the view that a branch office cannot be treated as a separate entity for tax assessment purposes. This judgment had significant implications for multinational corporations operating in India and sets a precedent for future tax disputes involving PE and their head offices.

h. PROGRESS RAIL LOCOMOTIVE INC vs DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION), CIRCLE- NOIDA & ORS. (dated 29.05.2024)

In a landmark judgment, the Hon'ble High Court of Delhi quashed reassessment proceedings against Caterpillar Group's Indian subsidiary, significantly impacting tax jurisprudence. The Court held that the Indian subsidiary did not constitute a Fixed Place PE, Service PE, or Dependent Agent PE under the India-USA DTAA. The Hon'ble Court held that mere employee visits or board representation by the parent company do not establish a Service PE. Additionally, the court observed that activities performed by the subsidiary were merely preparatory or auxiliary in nature.



i. GE CAPITAL US HOLDINGS INC vs DY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) CIRCLE 1(3) (1), NEW DELHI AND ORS DATED 31.05.2024

The Hon'ble High Court of Delhi, *inter alia*, held that the categorical finding of 'mis-reporting' or 'under-reporting' is essential to sustain penalty under Section 270A of the Act. The Hon'ble Court quashed the notice issued under Section 270A of the Act due to the failure of the Income-tax Department to mention to specific charge of misreporting or under-reporting in the said show cause notice.

j. AYODHYA RAMI REDDY ALLA vs PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL DATED 07.06.2024

The Hon'ble Telangana High Court dismissed the assessee's writ petition against the invocation of General Anti-Avoidance Rules ('GAAR'). The Hon'ble Court held that the arrangement entered into by the petitioner lacked commercial substance and was deemed impermissible tax avoidance under Section 96 of the Act. The principle of specific provision prevailing over the general, applies exclusively when the general provisions are introduced prior to the specific provisions. Additionally, the Court, *inter alia*, held that GAAR provisions, beginning with a non-obstante clause, would override other provisions of the Act. The Specific Anti-Avoidance Rules (SAAR) and GAAR could both be applied depending on the facts and circumstances of each case (as has been clarified by the CBDT in one of its circulars). The principle of 'form over substance' must be looked at to arrive at a determination, as to whether the 'intent' of the transaction was to avoid taxes. While tax planning may be legitimate within the bounds of the law, colourable devices cannot be accepted as part of tax planning.

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

a. NOTIFICATION S.O. 2103(E) [NO. 44/2024/F.NO.370142/10/2024-TPL], DATED 24.5.2024

The CBDT has notified 363 as Cost Inflation Index for FY 2024-25 i.e. Assessment Year ("AY") 2025-26. The cost inflation index acts as an important tool for the calculation of long term capital gain. This is done to ensure that taxpayers pay taxes on their actual gains rather than the nominal gains inflated by general price increases, it modifies the asset acquisition price to account for inflation.

b. CIRCULAR NO.7/2024 F.NO. 173/25/2024-ITA DATED 25.05.2024

The CBDT has issued a Circular in order to extend the due date for filing Form No. 10A and I0AB under the Act, to 30.06.2024. This extension aims to address challenges faced



by taxpayers and stakeholders in electronic filing, providing relief and mitigating genuine hardship. The said form allows trusts, institutions, and funds to rectify past filing errors and ensure compliance without penalties or rejections.



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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