



Luthra and Luthra
LAW OFFICES INDIA

DIRECT TAXATION UPDATES – INCOME TAX LAW

NEWSLETTER – SEPTEMBER 2024 EDITION

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

In **September 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

IMPORTANT JUDGMENTS PASSED BY HON’BLE HIGH COURTS IN THE CASES OF:

a. PayPal Payments Private Ltd. vs. Assistant Commissioner of Income Tax and Ors. dated 09.09.2024 passed by Hon’ble Bombay High Court:

The Petitioner vide a writ petition *inter alia* challenged the Final Assessment Order dated August 11, 2024 passed under Sections 143, 144, and 92CA of the Income-tax Act, 1961 (“**the Act**”) for Assessment Year (“**AY**”) 2021-22 by the Assessing Officer (“**AO**”) and the consequent demand notice issued under Section 156 of the Act and the subsequent penalty proceedings initiated under the Act. The Petitioner *inter alia* argued that the said Order should be quashed since it has been issued beyond the statutory time limit prescribed under Section 153 of the Act. The Petitioner *inter alia* relied on the Order dated August 13, 2024 passed by the Hon’ble Bombay High Court in Petitioner’s own case on the same issue. Following its earlier Order dated August 13, 2024, the said Hon’ble Court issued Rule, admitted the said writ petition and granted *ad-interim relief* to the Petitioner and granted liberty to the parties to apply, in the event orders relevant to the issue of law as involved, are passed by the Hon’ble Supreme Court and the final decision being rendered by the Hon’ble Supreme Court. The issue of law involved in this case is similar to the cases of **CIT vs. Roca Bathroom Products P. Ltd. (2022) 445 ITR 537 (Mad.)** pending before the Hon’ble Supreme Court (that is, interpretation of the provisions of Section 144C vis-à-vis Section 153 of the Act).

b. Well Trans Logistics India(P.) Ltd. v. Addl. Commissioner of Income-tax dated 02.09.2024 passed by Hon’ble High Court of Delhi:

The Hon’ble High Court of Delhi had set aside notice under Section 148 of the Act. In this case, the AO had issued the notice under Section 148 of the Act solely based on the information received from the Investigation Wing, indicating a substantial cash deposit in the assessee’s bank accounts. The Hon’ble Court, *inter alia*, held that there was no “close nexus” or “live link” between the information received and the reason to believe that income had escaped assessment. Relying on the decisions in **ITO v. Lakhmani Mewal Das and Pr. CIT v. Meenakshi Overseas (P.) Ltd. (1976) 103 ITR 437**, the Hon’ble Court *inter alia* quashed the re-assessment notice and held the re-assessment proceedings as invalid since the AO merely relied on the Investigation Wing’s report without any independent verification by the said AO.



c. Adani Wilmar Ltd. v. Assistant Commissioner of Income-tax dated 03.09.2024 passed by Hon'ble Gujarat High Court:

The Petitioner had already been assessed under Section 115JB of the Act and had paid the corresponding taxes. The Revenue issued a notice under Section 148 of the Act to reopen the assessment based on an 'information' suggesting certain bogus entries in the Petitioner's books. However, the Hon'ble High Court of Gujarat has *inter alia* held that even if the alleged escaped income was added to the regular income, the total tax liability would still be less than the Minimum Alternate Tax (“MAT”) paid by the Petitioner. Therefore, no income had escaped assessment in the hands of the Petitioner. Consequently, the reassessment notice under Section 148 was quashed by the said Hon'ble Court.

d. Macleods Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax dated 03.09.2024 passed by Hon'ble Bombay High Court:

The Hon'ble Bombay High Court quashed notices issued under Sections 148A(b) and 148 of Act due to non-compliance of the provisions of Section 151A of the Act. The reassessment proceedings were initiated by the Jurisdictional Assessing Officer (**JAO**) instead of the Faceless Assessing Officer (**FAO**) as mandated under the faceless scheme introduced vide government notification on 29th March 2022. This procedural lapse held the said notices as invalid as compliance with the provisions of Section 151A of the Act is mandatory. Citing the precedent set in **Hexaware Technologies Ltd. v. Asstt. Commissioner of Income-tax [2024] 464 ITR 430 (Bom.)**, the Hon'ble Court *inter alia* held that the reassessment notices must follow the faceless mechanism and failure to do so vitiated the whole proceedings.

e. Jyotsna M. Mehta v. Principal Commissioner of Income-tax dated 04.09.2024 passed by Hon'ble Bombay High Court:

The Petitioner failed to file its Income-Tax return on time due to Chartered Accountant's (**CA**) personal difficulties. The Petitioner applied for condonation of delay under Section 119(2)(b) of the Act, however, the Principal Commissioner of Income Tax (“**PCIT**”) rejected the said application stating that the reasons stated therein were not genuine. The Petitioner challenged the said action vide a writ petition before the Hon'ble High Court. The Hon'ble High Court held *inter alia* that the PCIT's decision was mechanical and lacked sensitivity, as it failed to acknowledge the genuine dependence on the CA. The Hon'ble Court *inter alia* held that human factors, like illness, can disrupt timely compliance, and such situations must be handled empathetically. The Hon'ble Court *inter alia* allowed the writ petition, condoned the delay and allowed the Petitioner to file its income-tax returns without any penalty or levy of interest.



f. Principal Commissioner of Income-tax v. Sahyadri Co-operative Credit Society Ltd. dated 04.09.2024 passed by Hon'ble High Court of Kerala:

The Petitioner is a multi-state co-operative society. It *inter alia* provides credit facilities to its members. It had deposited its surplus profits with permitted bank or financial institution, in accordance with statutory requirements, and had earned interest on the same in the relevant financial year. The Revenue was of the view that the interest earned on the said deposits is not eligible for deduction under Section 80P of the Act. The Hon'ble High Court of Kerala had, *inter alia*, held that the said interest income retained the character of "profits and gains of business" attributable to the Petitioner's core activity of providing credit facilities, and thus, such interest income is qualified for the deduction under Section 80P of the Act.

g. Divine Infracon (P.) Ltd. v. Deputy Commissioner of Income-tax dated 09.09.2024 passed by Hon'ble High Court of Delhi:

The AO issued notice under Section 148 of the Act, and in, the reasons recorded for reopening of assessment, the AO relied on a valuation report from the District Valuation Officer ("**DVO**") which estimated substantial investments in renovation of property thereby alleging that the Petitioner declared nil investment. The Hon'ble High Court of Delhi quashed the said reassessment on notice the ground that there is no application of mind by the AO and there was no statement by AO for basis for reliance on valuation report.

h. Surya Cotspin Ltd. v. Principal Chief Commissioner of Income-tax dated 09.09.2024 passed by the Hon'ble Punjab and Haryana High Court:

The Hon'ble Punjab and Haryana High Court has quashed the reassessment notices and proceedings initiated against the Petitioners due to lack of jurisdiction as they were not conducted in a faceless manner. The said Hon'ble Court reiterated that the Respondents must adhere to the proper procedures prescribed under the Act.

i. Genpact India (P.) Ltd. v. Assistant Commissioner of Income Tax dated 09.09.2024 passed by the Hon'ble High Court of Delhi:

In this case, initially, a notice under Section 148 of the Act was issued on 30th June 2021 to the Petitioner but no proceedings took place thereafter. A subsequent notice under Section 148A(b) of the Act was issued on 27th May 2022 to the Petitioner, which the Petitioner challenged vide a writ petition before the Hon'ble High Court *inter alia* on the grounds that the said notice was issued beyond the period of limitation as prescribed by the First Proviso to Section 149(1) of the Act. The Hon'ble Court *inter alia* held that the notice issued under Section 148(b) was not in continuation of the earlier notice and was, therefore, time-barred under Section 149 of the Act. Consequently, the re-assessment notices and all subsequent proceedings were quashed by the said Hon'ble Court.



j. JD Printers (P.) Ltd. v. Income-tax Officer dated 10.09.2024 passed by the Hon'ble Bombay High Court:

The issue before the Hon'ble Bombay High Court was on the issuance of a notice under Section 148 of Act by the JAO outside the faceless mechanism prescribed under Section 144B read with Section 151A of the Act. The Petitioner challenged the said notice and *inter alia* argued that it was contrary to the Central Government's Faceless Scheme notified under Section 151A of the Act which *inter alia* mandates the faceless assessment process. The said Hon'ble Court *inter alia* held that similar petitions were disposed of by the said Court in light of its judgment in the case of **Hexaware Technologies Ltd. v. Asstt. CIT [2024] 464 ITR 430 (Bom.)**. The said judgment has been challenged by the Revenue-Respondents before the Hon'ble Supreme Court. Given the pending proceedings before the Hon'ble Supreme Court, the Hon'ble High Court granted interim relief to the Petitioner and stayed the reopening notice and any related proceedings until the Hon'ble Supreme Court delivers its final judgment in the case of **Hexaware Technologies**.

k. Satish Chand Jain v. Assistant Commissioner of Income Tax dated 11.09.2024 passed by the Hon'ble High Court of Delhi:

In this case, an assessment under Section 143(3) of the Act was completed in 2016, however, basis certain information received from the Investigation Wing, alleging that the Petitioner benefited from misusing the NSEL Exchange platform. The Revenue issued reassessment notice under Section 148 of the Act on 31st March 2021 to the Petitioner. The reassessment proceedings were concluded on 30th March 2022. Thereafter, a fresh notice under Section 148A(b) of the Act was issued on 02nd June 2022 to the Petitioner based on the same facts, following the Supreme Court's judgment in **Union of India v. Ashish Agarwal (2022) 444 ITR 1**. The said notice was challenged by the Petitioner vide a writ petition before the Hon'ble High Court. In this regard, the Hon'ble Court quashed the notice issued under Section 148(b) of the Act and, *inter alia*, held that the Hon'ble Supreme Court's judgment in the case of **Ashish Agarwal** did not permit reopening assessments which have been already concluded.

l. Hyatt International Southwest Asia Ltd v. Additional Director of Income Tax dated 19.09.2024 passed by the Hon'ble High Court of Delhi:

The Full bench of Hon'ble High Court of Delhi has overruled its earlier judgment passed by Division Bench in the case of **Nokia Networks OY vs. Deputy Commissioner of Income Tax (International Taxation) 2022 SCC OnLine Del 5088** and, *inter alia*, held that profits of a Permanent Establishment ("PE") of a UAE-based company should be independently taxed, regardless of the global financial losses incurred by the parent company. The Hon'ble Court *inter alia* held that under Article 7 of the India-UAE Double Taxation Avoidance Agreement ("DTAA"), a PE is treated as a separate entity for tax purposes. Therefore, profits arising from the PE's operations in India must be taxed locally, independent of the overall global profits or losses of the parent company.



m. Abhinav Jindal HUF v. Income Tax Officer dated 20.09.2024 passed by the Hon'ble High Court of Delhi:

In this case, the reassessment notice under Section 148 of the Act was issued beyond a period of four years after the end of the relevant AY, and, thereby, required approval from a higher authority. The issue before the Hon'ble Court was whether, in the present case, the approval for issuing a reassessment notice was valid as it was granted by the Joint Commissioner of Income Tax (“JCIT”) instead of the Principal Commissioner or Chief Commissioner as mandated under the provisions of Section 151 of the Act. The Hon'ble High Court of Delhi, *inter alia*, held that the sanction under Section 151 of the Act was required to be taken from Principal Commissioner or Chief Commissioner, and, since the sanction was obtained from the JCIT, the said reassessment notices were held invalid.

n. Williamson Financial Services Ltd. v. Commissioner of Income Tax dated 24.09.2024 passed by the Hon'ble High Court of Guwahati:

The Hon'ble High Court of Guwahati has, *inter alia*, held that Explanation to Section 14A of the Act, inserted by the Finance Act, 2022 must be applied prospectively. In this case, the Revenue had invoked Section 14A of the Act disallowing certain expenses in lieu of Explanation to Section 14A. Upon appeal, the CIT(A) and ITAT *inter alia* held that the insertion of Explanation to Section 14A was clarificatory and could be applied retrospectively. In this regard, the said Hon'ble Court overturned this order passed by the ITAT and *inter alia* held that the Explanation to Section 14A of the Act was prospective in nature. It further held that the legislative intention, as stated in the Memorandum to the Finance Bill, 2022, was to apply the amendment from AY 2022-23 onwards, that is, prospectively.

AS HELD BY HON'BLE INCOME TAX APPELLATE TRIBUNAL (“ITAT”) IN THE CASES OF:

a. Atomstroyexport v. Deputy Commissioner of Income-tax (International Taxation) dated 06.09.2024 by ITAT, Mumbai Bench:

The Appellant, a Russian company engaged in the business of setting up power projects in India, received income from offshore supply contracts in the relevant AY. The Appellant contended that since these contracts were concluded and carried out outside India, thus, the income should not be taxable under the Act. However, the AO disagreed and sought to tax the offshore receipts under Section 44BBB of the Act. The ITAT, relied on the judgment passed by the Supreme Court in the case of **Ishikawajima Harima Heavy Industries Co. Ltd. v. DIT [2007] 288 ITR 408**, and, *inter alia* held that since the offshore contracts were executed entirely outside India, the income does not accrue or arise in India, and therefore, it is not taxable in the hands of the appellant. Consequently, the appeal was allowed.

**b. Sarvadeivatha Education Trust v. Income-tax Officer dated 06.09.2024 by ITAT, Bangalore Bench:**

The Appellant, a charitable trust engaged in educational activities, faced the denial of an exemption under Section 11 of the Act due to a 29-day delay in filing of Form 10B (audit report). Since the said delay was the reason for the denial of the exemption, the Appellant sought condonation of the delay from the CBDT under Section 119 of the Act, but the request was rejected. The Appellant then appealed before the CIT (A) in 364 days after receiving the intimation under Section 143(1) of the Act, but the CIT(A) dismissed the appeal without condoning the delay. Upon further appeal, the ITAT ruled in favour of the Appellant, *inter alia*, holding that the delay in filing the appeal before the CIT(A) was justified as the Appellant had been pursuing an alternative remedy in good faith. The ITAT further clarified that filing Form 10B is directory, not mandatory, and that the exemption under Section 11 of the Act cannot be denied when the audit report was available at the time of processing the return of income. The case was remanded to the AO for verification of Form 10B and reconsideration of the exemption by the ITAT.

c. Industrial Investment Bank of India Ltd. v. Principal Commissioner of Income Tax dated 10.09.2024 by ITAT, Kolkata Bench:

The Appellant, a company undergoing voluntary liquidation contended that it was exempt from the MAT provisions as it was not preparing a profit and loss statement. During the assessment proceedings, the AO did not apply Section 115JB of the Act. However, the PCIT invoked Section 263 of the Act to revise the assessment, deeming it erroneous and prejudicial to the interest of revenue. The ITAT *inter alia* upheld the PCIT's action and held that Section 115JB of the Act does not exempt the companies under voluntary liquidation, and the assessee's failure to compute book profits was incorrect. It further held that MAT was applicable and that the AO had erred in not conducting an inquiry or applying Section 115JB of the Act. Consequently, the ITAT dismissed the appeal and confirmed the reassessment requiring the computation of MAT.

RECENT NOTIFICATIONS AND LETTERS ISSUED BY CENTRAL BOARD OF DIRECT TAXES (“CBDT”):**a. Circular no. 9/2024 dated 17.09.2024**

The CBDT has issued Circular No. 9/2024 to enhance the monetary limits for filing appeal by the Revenue against the orders passed in favour of the taxpayers. This is part of efforts to manage litigation and reduce unnecessary legal disputes. The revised monetary limits are as follows:



S.NO.	Particulars	Amount (INR)
1	Before Income Tax Appellate Tribunal	60 lakhs
2	Before High Court	2 crores
3	Before Supreme Court	5 crores

These limits apply to all cases, including those relating to TDS/TCS, with exceptions where decisions to appeal will be based on the merits of the case rather than tax effect. Appeals should not be filed solely because the tax effect exceeds these limits; rather, the overall objective is to minimize litigation and ensure certainty for taxpayers. The circular takes effect immediately and applies to both new and pending cases. Further, the pending cases before Supreme court or High Court or ITAT will be withdrawn.

b. Circular no. 10/2024 dated 29.09.2024

CBDT has issued a circular extending the deadline to furnish the audit report under the Act for the AY 2023-24. Earlier, the said time limit was 30th September 2024 which has now been extended to 07th October 2024.



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.

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