



# **Luthra *and* Luthra**

LAW OFFICES INDIA

## **DIRECT TAXATION UPDATES – INCOME TAX LAW**

NEWSLETTER – FEBRUARY 2025 EDITION

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

In **February, 2025 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 SUPREME COURT OF INDIA IN THE CASES OF:

#### **Vinubhai Mohanlal Dobaria v. Chief Commissioner of Income Tax dated 07.02.2025.**

The Hon'ble Supreme Court, *inter alia* held that under the Guidelines for Compounding of Offences, 2014, an assessee can qualify for compounding of multiple offences under Section 276CC of the Income Tax Act, 1961 ("the Act") if they were committed before the issuance of any show-cause notice for prosecution. The case involved assessee, who filed a belated Income Tax Return (ITR) for Assessment Year ("AY") 2011-2012 and was granted compounding in 2014. However, when he again filed a delayed return for AY 2013-2014, the Income Tax Department rejected his compounding request in 2017, citing that compounding was only available for the first offence. The Gujarat High Court upheld this rejection. However, the Supreme Court reversed this decision, clarifying that a "first offence" under the 2014 Guidelines refers to any offence committed before the issuance of a show-cause notice. Since both AY 2011-2012 and AY 2013-2014 offences occurred before such notice, the appellant was eligible for compounding for AY 2013-2014.

#### **Commissioner Of Income Tax (Exemptions) v. M/S International Health Care Education and Research Institute dated 11.02.2025.**

The assessee trust was engaged in activities like education and medical aid, registered under the Indian Trusts Act, 1882, and it was seeking registration under Section 12AA of the Act for tax exemption purposes. The Commissioner of Income Tax (CIT) declined the registration, citing the absence of evidence proving the trust's charitable activities. The Income Tax Appellate Tribunal (ITAT) and Rajasthan High Court ruled in favour of the assessee-trust. Upon further appeal by the Revenue, the Hon'ble Supreme Court, *inter alia* held that while registration under Section 12AA is a prerequisite for claiming tax exemption, the trust must substantiate its charitable nature with proper evidence. Furthermore, when a trust files a return claiming exemption, the Assessing Officer (AO) must independently verify its legitimacy, and if not satisfied, has the authority to deny the exemption. The Court dismissed the Revenue's appeal, affirming that registration alone does not guarantee tax exemption and that scrutiny at the assessment stage remains crucial.

**IMPORTANT JUDGMENTS PASSED BY DIFFERENT HON'BLE HIGH COURTS IN THE CASES OF:****Vijay Shrinivasrao Kulkarni vs Income Tax Appellate Tribunal, Pune on 04.02.2025 passed by Hon'ble Bombay High Court.**

The Hon'ble Bombay High Court *inter alia* addressed the issue of denial of a fair hearing in a case where the assessee had initially claimed relief under Section 89(1) of the Act but later withdrew it, seeking to classify Ex-Gratia and incentive payments as capital receipts. The AO rejected the claim, stating that termination-related payments do not qualify for relief under Section 89(1). The CIT(A), under the faceless regime, passed an ex-parte order, dismissing the appeal without granting the petitioner an opportunity to present their case. Further, the ITAT refused to remand the matter and insisted on hearing the appeal on merits, denying the petitioner's advocate a short adjournment for submission of additional documents. In response, the High Court held that the principles of natural justice were violated, emphasizing that Article 14 of the Constitution of India, 1950 guarantees right to be heard before an adverse administrative Order is passed. The Court remanded the case back to the ITAT for a fresh hearing, ensuring that the petitioner receives a fair opportunity to present their appeal.

**Commissioner of Income Tax v. Benetton India Pvt. Ltd. dated 06.02.2025 passed by Hon'ble Delhi High Court**

The Revenue filed appeal against dismissal of its appeal by CIT(A) whereby, the CIT (A) deleted the adjustment of Rs. 5,93,90,122/- on account of reimbursement of salaries paid and Rs. 3,71,68,024/- on account of payment of royalty. The Hon'ble Delhi High Court noted that the Transfer Pricing Officer (TPO) had reasoned that since royalty was paid for technical know-how for reduction of costs and earning profits, the fact that the Assessee had not earned any profit was indicative of value of technical know-how being nil, which reasoning was regarded as flawed by the Court. The court highlighted that the TPO is to merely examine whether the acquisition of the know-how was on arms' length basis and dismissed the appeal being devoid of merits.

**M/s Legacy Foods Pvt. Ltd. v. Deputy Commissioner of Income Tax & Anr. dated 07.02.2025 passed by Hon'ble Delhi High Court**

The assessee impugned the Order passed by ITAT whereby the ITAT *inter alia* held that in order to claim a deduction under Section 80IC of the Act, it would have to demonstrate that the conditions set forth in Rule 18BBB(4) are fulfilled and information sought is provided in Form 10CCB. The Revenue argued that the assessee had failed to place on record an agreement or approval that may have been granted to it by local or state authority. The Hon'ble High Court of Delhi held that the respondent authority lost sight of the distinction between Section 80IA and 80IC. In view of Section 80IC, it becomes apparent that there is no requirement of an entity which claims coverage under Section 80IC(2)(b)(ii) to have in place an agreement with either



the Central or State Government or any local authority. Thus, the Court allowed the appeal and set aside the Order of the ITAT dated 28.02.2020.

### **Commissioner of Income Tax International Tax-1 New Delhi v. M/s Expeditors International of Washington Inc. dated 13.02.2025 passed by Hon'ble Delhi High Court.**

The limited question that was taken up by the Hon'ble High Court of Delhi in this appeal was whether the Freight Logistic Support Services provided by the assessee is in the nature of Fee for Technical Services/Fee for Included Services and thus fall within the ambit of Section 9(1)(vii) of the Act read along with Article 12 of the India-USA Double Taxation Avoidance Agreement ("DTAA"). The High Court relied on its earlier ruling in *International Management Group (UK) Ltd. v. Commissioner of Income Tax* and concluded that FTS is firstly concerned with rendition of specialized knowledge, skill. Expertise and know-how. Second facet of FTS/FIS is "make available" condition which envisions transfer of specialized knowledge and skill. When tested upon the above-laid considerations, the case of the assessee is clearly not specialized skill or knowledge acquired or possessed by the assessee and thus, the view expressed by the Tribunal was upheld.

### **Vivo Mobile India Private Limited Vs ACIT & Anr. dated 14.02.2025 passed by Hon'ble Delhi High Court**

The Hon'ble High Court of Delhi has set aside an order under Section 148A(d) and reassessment notice against assessee. A notice was issued under Section 148A(b) of the Act based on alleged bogus capital expenses linked to a fictitious entity, M/s. Zhongmao (India) Eng. Pvt. Ltd. Assessee clarified that the transactions were actually with M/s. Zhonghua (India) Eng. Pvt. Ltd., a different entity. However, the Revenue, upon physical verification, found no such entity at the provided address and concluded it was a paper company facilitating accommodation entries. Without issuing a fresh notice to seek clarification on this discrepancy, the Revenue proceeded with the reassessment order under Section 148A(d) of the Act. The High Court *inter alia* held that once an assessment is closed, the AO becomes functus officio, and any attempt to reopen proceedings requires proper incriminating material to be presented to the assessee beforehand. The Court reiterated that principles of natural justice apply to all administrative and quasi-judicial actions, particularly in taxation matters. By failing to give assessee an opportunity to explain the existence of M/s. Zhonghua (India) Eng. Pvt. Ltd., the Revenue violated due process.

### **SFDC Ireland Limited v. Commissioner of Income Tax & Another dated 17.02.2025 passed by Hon'ble Delhi High Court**

The Petitioner herein filed appeal challenging the Order passed by the Respondent under Section 197 of the Act in respect of FY 2024-25 authorizing the petitioner to receive payment (Rs. 6,33,34,44,669/-) from M/s Salesforce.com India Private Limited (SFDC India) after withholding Tax Deducted at Source (TDS) at the rate of 2% (excluding cess and surcharges).



The Petitioner contended that its income resulting from the receipts from SFDC India is not chargeable to tax and thus, payments ought to have been allowed without deducting any taxes. The Court noticed that there are no express findings on a prima facie basis which show that the petitioner has a PE in India. Moreover, the impugned order also did not disclose sufficient grounds which would sustain this assumption. Thus, the Hon'ble Delhi High Court set aside the Order of the AO and directed him to issue certificate under Section 197(1) of the Act for nil withholding tax.

### **Shiv Parkash Bansal v. Deputy Commissioner of Income Tax Central Circle-14 Delhi & Ors. dated 18.02.2025 passed by Hon'ble Delhi High Court.**

The Petitioners in this case challenged the initiation of proceedings under Section 153C of the Act. The sole ground of the challenge was that the material gathered had no correlation or connection with the individuals who were subjected to the search. The Hon'ble Delhi High Court *inter alia* interpreted Section 153C as a contingency where the search may lead to the unearthing of money, bullion, jewellery or other valuable article or thing or for that matter, books of account or documents which belong or pertain to a person other than the one referred to in Section 153A. The Section 153C action is thus aimed at a reopening of an assessment made in respect of a person other than the one referred to in Section 153A and such person being the non-searched entity. All assessments pending on the date of commencement of action under that provision stand abated and the AO thus becomes empowered to commence assessment afresh. The trigger for Section 153C is thus the discovery of documents or articles in the course of a search which pertain or belong to a third party, and which may have a bearing on the determination of the total income of such other person for the relevant AY. Thus, the Court was of the firm opinion that the statutory scheme does not mandate or envisage the discovery of a connect or interrelationship between the searched and the non-searched entity. Consequently, the petitions failed and were dismissed by the Court.

### **Sejal Jewellery & Anr. V. Union of India & Ors. dated 18.02.2025 passed by Hon'ble High Court of Bombay.**

The Bombay High Court *inter alia* held that when materials obtained from a search action serve as the foundation for an income tax reassessment, the correct legal route is issuing a notice under Section 153A/153C, rather than Section 148 of the Act. The dispute arose when the Revenue initiated reassessment proceedings under Section 148 of the Act, relying on search materials from Shilpi Jewellers Pvt. Ltd., which revealed accommodation entries linked to Green Valley Gems Pvt. Ltd., a suspected shell company. The Court *inter alia* held that that when findings from a search operation are the basis for reassessment, the Revenue is bound to proceed under Section 153A/153C, as these provisions have an overriding effect. Citing the Supreme Court rulings, the Bombay High Court reinforced that post-search assessments must strictly adhere to Section 153A/153C to ensure procedural clarity and prevent jurisdictional overreach. The Court highlighted the non-obstante clause in Section 153A, making it the mandatory route for assessments based on search findings.

**The Commissioner of Income Tax - International Taxation -2 v. Nokia Network OY dated 21.02.2025 passed by Hon'ble Delhi High Court**

The Hon'ble Delhi High Court *inter alia* reaffirmed that a subsidiary does not *Ispo Facto* constitute a Permanent Establishment (PE) of its parent company. The case involved Finland-based Nokia Networks OY, which had initially set up a Liaison Office in India before incorporating its wholly owned subsidiary, Nokia India Private Limited (NIPL). Nokia OY did not file a Return of Income, arguing that offshore supplies were not taxable in India. However, the AO contended that NIPL constituted a PE of Nokia OY in India. The Court rejected this assertion, highlighting that NIPL operated independently, conducting its own business with Indian telecom operators without generating revenue for Nokia OY. The Court emphasized that the existence of a PE cannot be based on mere perception but must meet objective standards under the DTAA, such as the use of a fixed place of business or the authority to conclude contracts on behalf of the parent company. Since NIPL had no such authority and its activities were distinct from Nokia OY's offshore supply contracts, the Court ruled that no Dependent Agent Permanent Establishment (DAPE) existed in the relevant AY. With this, the departmental appeal was dismissed, reinforcing the principle that a subsidiary's presence alone does not create a taxable PE for the foreign parent company.

**GE Grid (Switzerland) Gmbh v. Assistant Commissioner of Income Tax & Anr. dated 24.02.2025 passed by Hon'ble Delhi High Court.**

The reassessment action initiated by the respondents in exercise of powers conferred by Section 148 of the Act was challenged by the Petitioners which pertained to AY's 2013-14 to 2017-18. The reassessment action commenced prior to introduction of Finance Act, 2021 and the notice under Section 148 came to be issued on 17.03.2021. the Petitioner was stated to have filed no ITR for AY 2013-14 and asserted that it had no PE in India. The Hon'ble Delhi High Court *inter alia* held that the respondents have failed to establish that their opinion was based on any independent inquiry or material collected by the AO. Relying on the previous judgment passed by the Court in *Grid Solutions OY (Ltd.) v Assistant Commissioner of Income Tax International Taxation and Another*, the Court allowed the appeal and quashed the reassessment orders.

**Principal Commissioner of Income Tax v. WGF Financial Services Pvt. Ltd. dated 25.02.2025 passed by Hon'ble Delhi High Court.**

The petitioner filed its ITR declaring a loss of Rs. 43,61,059/- which was later revised to the amount of Rs. 27,43,23,324/-. The AO through order dated 29.12.2017 assessed the income of the petitioner at Rs. 28,08,43,048/- and disallowed the bad debts to the tune of Rs. 27,76,90,000/-. The present appeal filed by the Revenue was confined to the deletion of disallowance of bad debts. The main question before the Hon'ble Delhi Court was whether ITAT had erred while allowing the discharge of guarantee obligation as business loss and whether





the business loss as claimed is allowable under Section 36(2)(i) of the Act. The Court noted that allowance in respect of bad debts is allowable only if:

- *the debt was taken into account for computing the income of the assessee in the previous year in which the amount is written off or prior previous years; or*
- *represents money lent in the ordinary course of business of banking or money lending.*

In the present case, none of the conditions were satisfied thus, the first question was answered in favour of the Assessee and the others in favour of the Revenue, by the Hon'ble Delhi High Court.

### **AS HELD BY HON'BLE INCOME TAX APPELLATE TRIBUNAL ("ITAT") IN THE CASES OF:**

#### **Delhi Tribunal in DCIT v. M V Agro Engineers Pvt. Ltd dated 12.02.2025 passed by Hon'ble Delhi ITAT.**

The Hon'ble Delhi ITAT provided clarity on the taxability of salary income paid to remote workers rendering services outside India. In this case, an Indian company hired non-resident employees for its operations in a foreign country, with salary payments made in the local currency through a hiring agency. The Delhi ITAT *inter alia* held that since the salaries were paid in Nigeria for services rendered in Nigeria, and the payments were facilitated through remittances from India, they do not fall within the scope of Section 9(1)(ii) of the Act. As a result, such salary payments are not taxable in India. This ruling reinforces the principle that salary income is taxed based on the place of service rather than the source of payment, offering greater clarity for companies employing remote workers overseas.

#### **DCIT vs Shri Pankaj Ratilal Mugdiya dated 24.02.2025 passed by Hon'ble Pune ITAT**

The Pune ITAT *inter alia* granted tax relief to assessee, whose possession of ₹62.20 lakh in cash and 7 kg of gold was initially treated as unexplained income under Section 69A of the Act. The Department argued that the assets should be taxed as undisclosed income for AY 2021-22, but the assessee contended that they were accumulated over six to seven years from his unaccounted bakery and trading business. A key turning point in the case was the tribunal's recognition of the COVID-19 lockdown from March to July 2020, during which non-essential businesses were largely shut, making it improbable for the assessee to generate ₹3.72 crore in just four months. The tribunal acknowledged that the assets could not have been earned solely during the lockdown and were accumulated over several years, thereby rejecting the department's claim. Additionally, the lack of serial numbers on the gold bars made it impossible to determine their purchase date, further weakening the case against the assessee.

#### **Rama Hygienic Products Pvt. Ltd. Vs ACIT ITA No. 7773/Del/2019 passed by Hon'ble ITAT Delhi dated 28.02.2025**





In a significant ruling the Hon'ble Delhi ITAT deleted the addition made by the AO, who had treated purchases from M/s Raghuvveer Singh Devinder Kumar as bogus despite the assessee providing comprehensive documentary evidence. The assessee, engaged in the manufacturing of flour and rice, had furnished detailed records of purchases, sales, and payments made through banking channels, along with ledger accounts and transporter statements confirming the delivery of goods. The AO primarily doubted the purchases based on suspicions surrounding transportation, while the sales remained undisputed. The CIT(A) acknowledged this fact and held that only the profit element from such purchases could be taxed. The Hon'ble Delhi ITAT *inter alia* held that the AO relied solely on oral statements without contradicting the documentary evidence or pointing out specific discrepancies, concluding that the addition was based on mere surmises and conjectures. Consequently, the ITAT completely deleted the addition, reinforcing the principle that gross profit, not the entire purchase value, can be added in cases of alleged bogus purchases.

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

### Update on Key Changes in the Income Tax Bill 2025

The **Income Tax Bill, 2025**, introduced in **Lok Sabha on February 13, 2025**, aims to replace the **Act** retaining most of its provisions. The primary objective of the bill is to **simplify language, eliminate redundant provisions, and enhance efficiency** in tax administration. Tax rates, definitions, offences, and penalties remain largely unchanged, with the bill set to take effect from **April 1, 2026**.

#### New Changes Introduced:

- **Power to Frame Schemes:** The Bill retains the faceless collection and assessment system while granting the **central government authority to introduce new schemes** aimed at improving **efficiency, transparency, and accountability**. These schemes will focus on
  - minimizing direct interaction with taxpayers through technology and
  - optimizing resource allocation via functional specialization and economies of scale.
  - Any scheme introduced must be presented before Parliament for approval.
- **Expanded Definition of Undisclosed Income:** The Bill broadens the scope of undisclosed income in search cases to include virtual digital assets (VDAs) such as cryptographically generated codes, numbers, or tokens representing digital value. This change aligns with the amendments proposed in the Finance Bill, 2025.
- **Access to Virtual Digital Space:** In addition to existing powers to enter premises, inspect electronic records, and break locks during searches, tax authorities will now be empowered to access virtual digital spaces. This includes email servers, social media accounts, online



trading platforms, and digital asset ownership records. Authorities can also override access codes to retrieve necessary information.

- **Enhanced Dispute Resolution Panel (DRP):** The Bill enhances the role of the Dispute Resolution Panel by mandating it to issue directions with clear points of determination and reasoning in cases involving transfer pricing, foreign companies, and non-resident taxpayers.
- **Clarification on Tax Treaty Interpretation:** If a term in a tax treaty is not defined in the treaty, the Income Tax Act, or a government notification, the Bill now states that its meaning will be derived from any other applicable central law.



*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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