Luthra and Luthra

LAW OFFICES INDIA

DIRECT TAXATION UPDATES – INCOME TAX LAW

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RECENT NOTIFICATIONS AND LETTERS:

a) **Circular no. 19/2024 dated 16.12.2024.**

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

In **December 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. Dish TV India Limited v. Commissioner of Income Tax (TDS) dated 01.12.2024 passed by Hon'ble Allahabad High Court:

The Hon'ble Allahabad High Court, *inter alia,* held that once a refund determination under the Vivad Se Vishwas Act, 2020 (hereinafter referred as **"VSV Act"**), in the form of Form 5 is issued, no further compliance such as filing of Form 26B is required to claim the refund. The Court emphasized that delays in refunds constitute unjust enrichment by the State, obligating it to pay interest under Section 244A of the Income Tax Act (hereinafter referred as **"the Act"**). The Court clarified that the provisions of Section 7 of the VSV Act do not preclude interest on refunds delayed after the issuance of Form 5. Thus, taxpayers are entitled to interest for such delays as a matter of equity and statutory right.

b. Commissioner of Income Tax (TDS)-2 v. Turner General Entertainment CIT – I v. M/S. Birlasoft Ltd. dated 03.12.2024 passed by Hon'ble Delhi High Court

The Hon'ble High Court of Delhi has ruled on two important issues: (i) eligibility for Section 10A benefits and (ii) transfer pricing benchmarking methodology. Hon'ble Court, *inter alia,* held that Respondents new STP unit was eligible for Section 10A benefits as a distinct and identifiable undertaking, emphasizing that engaging in the same line of business does not disqualify such units. It further clarified that eligibility is to be determined in the first year of operations and to be maintained in the subsequent years unless there is a significant change. Concerning transfer pricing, it was held that transactional net margin method (hereinafter referred as **"TNMM"**) should be applied at the entity level as the services are uniform and interlinked in the operations of the units. However, it accepted that segmental analysis could be suitable for specific transactions where the data is correct and adjusted. This judgment offers critical guidance on STP unit eligibility and transfer pricing assessment.

c. Mrs. Kamla Ajmera v. PR. Commissioner of Income Tax dated 03.12.2024 passed by Hon'ble Delhi High Court.

The Hon'ble High Court of Delhi addressed the issue whether the purchase of two separate residential flats in the same tower could qualify as "a residential house" under Section 54F of the Act for claiming exemption from capital gains tax. Hon'ble Court upheld the Income Tax Appellate Tribunal's (hereinafter referred as **"ITAT"**) decision that the two flats, located

on different floors and diagonally opposite ends, could not be considered a single residential unit due to their physical and legal separation. It concluded that the phrase "a residential house" denotes singularity, and the benefit under Section 54F applies only to one residential unit, disallowing the assessee's claim for exemption on both flats. The appeal was dismissed, affirming partial exemption for the flat with a higher investment amount.

d. The Principal Commissioner of Income Tax -7, Delhi v. UK Paints India Pvt Ltd dated 03.12.2024 by Hon'ble Delhi High Court:

The Hon'ble Delhi High Court, *inter alia,* held that the Assessing Officer (hereinafter referred as **"AO"**), as well as the appellate authorities [Commissioner of Income Tax (Appeals) (hereinafter referred as **"CIT(A)"**) and ITAT], did not find any fault with the Assessee's computation of expenses allocable to exempt income. Since no errors or inadequacies were identified in the Assessee's computation, the AO cannot invoke Rule 8D of the Income Tax Rules to compute disallowance under Section 14A of the Act. The Court emphasized that recourse to Rule 8D is permissible only when the Assessee's computation is found to be erroneous or inadequate.

e. Nokia Solutions and Networks India Pvt. Ltd. v. Joint Commissioner of Income Tax, & Ors. dated 04.12.2024 passed by Hon'ble Delhi High Court:

The Hon'ble High Court of Delhi has observed that as per Central Board for Direct Taxes (hereinafter referred as **"CBDT"**) instructions, a stay on disputed tax demands should be granted if the Assessee deposits 20% of the outstanding tax demand. However, adjusting tax refunds against the stayed demand places the Assessee entitled to a refund at a disadvantage compared to those not due a refund. The Court noted there were no allegations suggesting that the Assessee was alienating its assets or would be unable to pay the disputed demand if confirmed in appellate proceedings. Therefore, the Court directed the Department to refund the amount due to the petitioner with interest as applicable.

f. S A N Garments Manufacturing Private Limited v. Pr. Commissioner of Income Tax 7 and Anr. dated 12.12.2024 passed by Hon'ble Delhi High Court

The Hon'ble High Court of Delhi addressed the validity of Form No. 3 issued under the Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter referred as **"DTVSV Act"**). The petitioner had filed its income tax return for the Assessment Year 2012-13, which was accepted by the tax authorities. Later, the Petitioner sought to settle its disputes under the DTVSV Act, leading to the issuance of Form No. 3 on January 29, 2021. The Court found that the issuance of Form No. 3 was not in compliance with the provisions of the DTVSV Act, as the tax authorities had no power to reopen a concluded settlement under its framework. Consequently, the Court declared the form invalid and emphasized that tax

authorities must strictly adhere to settlement scheme provisions without revisiting finalized matters.

g. Principal Commissioner of Income Tax - Central 1 v. Capital Power Systems Ltd dated 13.12.2024 passed by Hon'ble Delhi High Court:

In the facts of the present case, the Hon'ble High Court of Delhi found that the reassessment proceedings initiated under Section 148, relying on Section 150 of the Act, were invalid. The Court, *inter alia,* clarified that vague observations in prior proceedings could not justify reopening assessments and emphasized that such findings or directions must be dispositive and binding to invoke Section 150.

h. Director of Income Tax International and ors v. Western Union Financial Services INC. dated 18.12.2024 passed by Hon'ble Delhi High Court.

The Hon'ble High Court of Delhi has examined whether the respondent had a "Permanent Establishment" (hereinafter referred as **"PE"**) in India under Article 5 of the Double Taxation Avoidance Agreement (hereinafter referred as **"DTAA"**) between India and the USA. The Court, *inter alia,* held that the liaison office's activities were merely preparatory or auxiliary, such as training agents and providing software, and did not contribute directly to the company's income in India. It held that the liaison office did not constitute a PE under the DTAA, as the activities carried out were within the limits of the Reserve Bank of India's permission and did not involve revenue-generating activities.

i. Mark Studio India Pvt Ltd v. Income Tax Officer dated 20.12.2024 passed by Hon'ble Madras High Court.

The Hon'ble Madras High Court clarified the roles and powers of Jurisdictional Assessing Officers (hereinafter referred as **"JAOs"**) and Faceless Assessing Officers (hereinafter referred as **"FAOs"**) under the Act in light of the Faceless Assessment Scheme, 2022. The Hon'ble Court noted that JAOs have exclusive jurisdiction to issue notices under Section 148, which must be digitally signed and sent via the Income Tax Business Application (hereinafter referred as **"ITBA"**) Portal to the assessee's registered email without naming the JAO. These notices are allocated to JAOs by the Directorate of Income Tax (Systems) through an Automated Allocation System based on risk management linked to PAN jurisdictions, requiring prior approval from higher authorities before issuance. JAOs must upload relevant documents, including the assessee's replies, to the ITBA Portal and forward cases to the National Faceless Assessment Centre (hereinafter referred as **"NaFAC"**) for further proceedings. Once NaFAC assumes jurisdiction, FAOs manage the assessment, reassessment, or re-computation of income under Section 147 and issue subsequent notices under Sections 143(2) or 142(1) as required. Both JAOs and FAOs operate within the framework of the faceless assessment scheme, ensuring compliance with the Board's guidelines issued under Section 144B. Procedural lapses, such as omitting the JAO's name, are considered curable and do not invalidate proceedings. This process

ensures a seamless transition from notice issuance by JAOs to assessment by FAOs, promoting transparency and procedural fairness in alignment with the faceless assessment scheme.

j. MS L. R. Sharma and Co. v. Union of India & Ors dated 20.12.2024 passed by Hon'ble Delhi High Court:

The Hon'ble High Court of Delhi, *inter alia,* held that the Revenue's decision to keep proceedings in abeyance due to a pending appeal on a similar issue before the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred as **"CESTAT"**) was unjustified. It emphasized that the pendency of another appeal does not absolve the Revenue from adhering to the time frame prescribed under Section 73(4B) of the Finance Act for concluding proceedings after issuing a show-cause notice. The Court noted that the Revenue could have continued with the present case, passed necessary orders, and, if aggrieved, filed an appeal before the CESTAT.

k. Nav Chetna Charitable Trust v. Commissioner of Income Tax (Exemption) dated 20.12.2024 passed by Hon'ble Mumbai High Court.

The Hon'ble Bombay High Court addressed the issue of condonation of a 799-day delay in filing Form 9A under Section 119(2)(b) of the Act. The petitioner, a registered charitable trust, attributed the delay to procedural changes requiring electronic submission. Despite filing within three days of a CBDT circular extending the deadline, the respondent rejected the application, deeming the delay intentional and not a mere procedural lapse. The court held that the rejection overlooked bona fide reasons and genuine hardship faced by the trust, contrary to the purpose of Section 119(2)(b) and relevant CBDT circulars aimed at mitigating such difficulties.

l. The PR Commissioner of Income Tax-4 New Delhi v. M/S Hespera Reality Pvt. Ltd. dated 24.12.2024 passed by Hon'ble Delhi High Court:

The Hon'ble High Court of Delhi examined Sections 10(38) and 115JB of the Act to held that the income from long term capital gains on certain assets, which are excluded from the total income under Section 10(38) will be included in computing book profits under Section 115JB. However, non-inclusion of such income or gains in book profits does not deprive the benefit of the exclusion of the gains from the total income.

AS HELD BY HON'BLE ITAT" IN THE CASES OF:

a. Modi Entertainment Ltd. vs. DCIT Circle 5 (1) dated 10 December 2024 by Hon'ble Delhi ITAT:

The said case revolves around the taxability of compensation. This compensation arose from a settlement agreement following a dispute over the termination of distribution rights and licenses held by Appellant. The AO classified this amount as business income under Section 28(ii)(b) of the Act, asserting that it was a revenue receipt due to the nature of the agreement between the parties. The CIT(A) upheld the AO's decision, leading to an appeal by Appellant to the ITAT. The ITAT examined the provisions of Section 28(ii) of the Act and concluded that the compensation received was indeed taxable as it was linked to profits that would otherwise accrue to Appellant due to its rights in the joint venture with Disney. Ultimately, the ITAT affirmed the AO's assessment, ruling that the compensation received was taxable and rejecting Appellant claim for it to be classified as a capital receipt.

b. Indus Towers Ltd. Gurgaon v. DCIT Circle 12(1), New Delhi dated 10 December 2024 by Hon'ble Delhi ITAT.

Appellant reported a significant loss and had undergone a Court-approved merger that involved transferring passive infrastructure assets (hereinafter referred as **"PIAs"**) from its shareholders to Tower Companies without consideration, which it claimed qualified as a "gift" for tax purposes. The AO was of the view that disallowed tax depreciation on the grounds that the transfer did not constitute a gift and concluded that the actual cost of the PIAs in Appellant hands should be treated as nil. The ITAT ruled in favor of Appellant regarding the depreciation of PIAs for the AY 2010-11. The tribunal determined that the transfer of PIAs from operating companies to tower companies constituted a "gift," allowing Appellant to claim tax depreciation based on the tax written down value (hereinafter referred as **"WDV"**) of these assets in the hands of the transferor companies. The ITAT found that the previous assessments incorrectly disallowed this depreciation, as they failed to recognize the nature of the asset transfer and its implications under tax law.

c. ITO v. Magnetic Properties Exim Pvt. Ltd. dated 11.12.2024 by Hon'ble Mumbai ITAT.

The tribunal held that the AO had reopened the assessment without a clear understanding of the nature of income that allegedly escaped assessment which is mandatory under Sec 147 of the Act and thereby the reopening of assessment in such a case was held to be bad in law.

d. ACIT CC-6(1), Mumbai vs. Prism Johnson Limited dated 13.12.2024 by Hon'ble Mumbai ITAT.

The Tribunal addressed the issue of whether a Sales Tax/Value Added Tax subsidy received under the "Madhya Pradesh Udyog Nivesh Samvardhan Yogna" was a capital or revenue receipt. The Tribunal held that the character of a subsidy must be determined by its purpose, not by its form or timing. If the subsidy is granted for setting up new industrial units, infrastructure development, or promoting employment in backward areas, it is to be treated as a capital receipt. Conversely, if the subsidy is intended to assist in the day-to-

day operations or augment profits, it qualifies as a revenue receipt. In this case, the subsidy received under the "Madhya Pradesh Udyog Nivesh Samvardhan Yogna" was aimed at promoting industrialization, employment, and regional development, making it a capital receipt.

e. Shaha Finlease Pvt Ltd, Mumbai v. Deputy Commissioner Income Tax dated 17.12.2024 by Hon'ble Mumbai ITAT.

The Tribunal addressed the issue of addition under Section 56(2)(viib) of the Act concerning the valuation of share premium. The assessee justified the share premium using the Discounted Cash Flow method, supported by a Chartered Accountant's valuation report. The Tribunal observed that the AO failed to provide substantial evidence to challenge the valuation methodology or its projections. The Hon'ble ITAT ruled that valuations adhering to recognized methods and backed by credible data cannot be arbitrarily questioned by the AO.

f. Orion India Systems Private Limited v. PCIT, Mumbai-6 Circle-15(1)(1) dated 17.12.2024 by Hon'ble Mumbai ITAT.

The Tribunal dealt with an appeal against an order passed under section 263 of the Act. The Principal Commissioner of Income Tax (hereinafter referred as **"PCIT"**) found that the Assessment Order was erroneous and prejudicial to the interest of revenue because the AO did not examine the claim of depreciation on goodwill acquired under a slump sale. The AO had accepted the return of income without making inquiries regarding whether the seller had paid taxes on the profits realized from the slump sale. The Tribunal upheld the invocation of revisionary proceedings under section 263, and observed that the AO had failed to examine the claim of depreciation on goodwill, which warranted a fresh assessment. The *Tribunal, inter alia,* held *that* the assessment order was indeed erroneous due to the lack of inquiry by the AO regarding the claim of depreciation.

g. Partho Das vs. Income Tax Officer dated 18.12.2024 by Hon'ble Mumbai ITAT.

The Tribunal addressed the applicability of Section 194C of the Act concerning tax deduction at source (hereinafter referred as **"TDS"**) on payments made to contractors and subcontractors. The tribunal noted that significant amendments to this section had occurred, particularly highlighting that the provisions applicable for the assessment year 2006-07 did not include a recent amendment effective from June 1, 2007, which expanded TDS obligations for individuals and Hindu Undivided Families. The Appellant, contended that he acted as a contractor rather than a subcontractor for crew wages related to ship scrapping services, arguing that he was not responsible for deducting TDS under Section 194C (2). The Tribunal found that there was no evidence of a subcontracting arrangement and concluded that Appellant was not liable for TDS deductions, thus reversing the previous authorities' decisions and allowing his appeal.

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

a. Circular no. 19/2024 dated 16.12.2024.

Issued by CBDT dated 16 December 2024. The circular offers a detailed explanation of various parameters to clarify the provisions of the Direct Tax Vivad Se Vishwas Scheme, 2024 (hereinafter referred as **"DTVSV Scheme, 2024"**).

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LAW OFFICES INDIA

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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