



# INCOME TAX BULLETIN

FEBRUARY 2023

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# JUDICIAL UPDATES

## 1. Consolidated rent is taxable on an accrual basis over the operational life of agreements

**Case of :** ITO v. Mytrah Wind Developers Private Limited

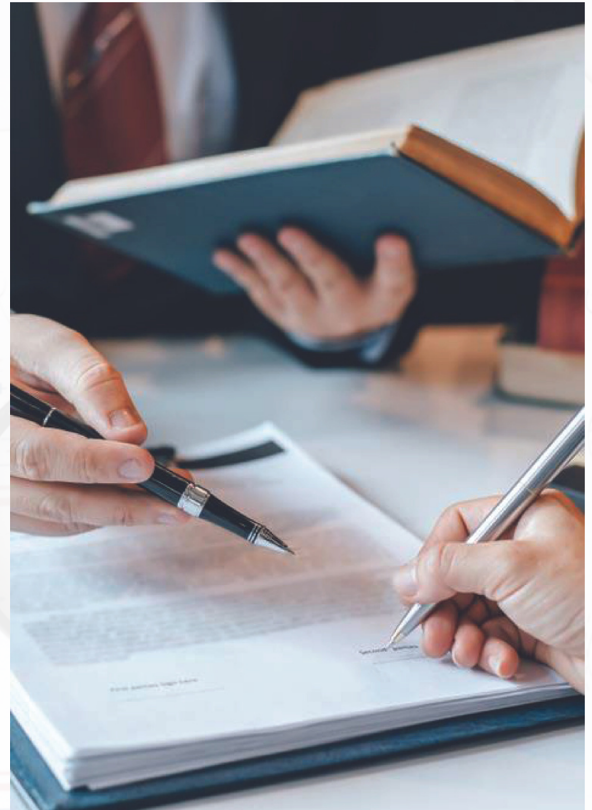
**Decision by :** ITAT, Hyderabad

**In favour of :** Assessee

- Assessee is engaged in setting up of sub-stations & extra high voltage lines for facilitating transmission of power generated from wind power farms.
- For AY 2014-15, Assessee accounted Rs. 10.33 Cr. as deferred revenue (comprising of lease rent and user fee) whereas the Revenue held it to be entirely taxable as lease premium. The CIT(A) held that as per the agreement, the rent received by the Assessee would be for the operational life of the project, i.e. 20 years commencing from the commissioning of the project and thus Assessee had rightly considered only proportionate income for the year following mercantile system of accounting.
- On appeal, ITAT noted that the agreement entered by the Assessee was nothing but an agreement to enter into 44 leases for 44 locations for a consolidated rent & hence, disapproved Revenue's approach in treating the rent as lease premium only.
- With respect to addition for user fee received in advance, ITAT explained that the assessee was under a contractual obligation to provide the evacuation facilities / common facilities to the company for a period of 25 years for which the assessee had received the payment and although the assessee has received upfront payment for providing the user facilities, these facilities are required to be provided for a period of next 25 years.



- Thus, ITAT held that ***“applying the same principle of incurring the present obligations on the basis of the past events, the assessee was required to incur the expenditure for providing the user facility in the subsequent assessment years and hence there would be an outflow of the revenue, therefore, the assessee was right in showing the matching income for the said period by evenly spreading the income in the subsequent assessment years when the corresponding obligation on assessee would be discharged by the assessee”.***



**Full Judgement : Mytrah Wind Developers Private Limited**

**SNR's Take**

The Tribunal has rightly held that consolidated rent received upfront, shall be deferred and taxed over the duration of the agreement. This rational approach is also in line with the generally acceptable accounting principles.

## 2. License Fee taxable as per revenue recognition policy, over agreement tenure

**Case of :** CU Inspections & Certifications India Pvt. Ltd Vs ACIT

**Decision by :** ITAT, Mumbai

**In favour of :** Assessee



- Assessee is engaged in the business of inspection and sampling and followed mercantile system of accounting in AY 2014-15 (first year of operation) and declared income of ₹ 2.21 Cr being accrued on Mar 31, 2014 and accounted unaccrued income of ₹ 3.35 Cr as *“License fees billed but not accrued”* under current liabilities of financial statement and accordingly, carried forward the unaccrued fees to subsequent year.
- During assessment proceedings, the Revenue rejected Assessee’s method of accounting and added back the fees *“billed but not accrued”* of ₹ 3.35 Cr and assessed total income of ₹ 5.58 Cr.
- CIT(A) also dismissed Assessee’s appeal and held that the liability of ₹ 3.35 Cr being license fees has to be assessed under cash system since the Assessee has actually received the same in the year under consideration and the Assessee’s contention to show it as deferred revenue recognition is contrary to accounting principles.
- On appeal, ITAT observed that Assessee is following the method of accounting wherein Assessee received license fees for conducting inspection of its client’s project and to issue certificate having validity of 12 months from the date of inspection.

- While accepting the Assessee's claim, the Tribunal applied the ruling of the jurisdictional high Court in the case of CU Inspections India (Assessee's Holding Company) on similar facts and held that since the license fees prescribed in the agreement was for the period of 12 months i.e., January to December, the Assessee rightly recognized 3 months income i.e., January to March as accrued in the year under consideration and offered it to tax and the remaining income of 9 months was shown as "income accrued but not due" in the liability side of balance sheet which was subsequently offered to tax in AY 2015-16.



### **Full Judgement: CU Inspections & Certifications India Pvt. Ltd**

#### **SNR's Take**

The Tribunal has given a logical judgment in applying the mercantile system of accounting while taxing the license fee received for a period not covered by the financial year in which it is received.

### 3. The amount received for "Uplinking" cannot be taxed as Royalty

**Case of :** Adore Technologies Pvt Ltd Vs The ACIT

**Decision by :** ITAT, Delhi

**In favour of :** Assessee

- Assessee is a tax resident of Singapore that provides satellite-based telecommunication services to media and entertainment businesses and received receipts from (i) Uplinking and allied services and (ii) Playout services in India.
- Revenue held that the uplinking services provided by the Assessee were part of a process wherein signals are taken from the playout equipments and sent to the satellite for broadcasting them to cable operators/direct to home operators and thus concluded that it constituted royalty under Section 9(1)(vi) as well as the DTAA. Further, Revenue held that the playout services were managerial and technical in nature and covered within the ambit of FTS as per Explanation 2 to Section 9(1)(vi).
- On appeal, ITAT noted that the Assessee's customers were neither in possession of any equipment nor had any control over the equipment used by the Assessee for providing uplinking and playout services to its customers and Assessee was the sole risk bearer in relation to the said equipment.



- It further explained that Royalty in relation to 'use of a process' envisages that the payer must use the 'process' on its own and bear the risk of its exploitation, thus, if the 'process' is used by the service provider itself and it bears the risk of exploitation or liabilities for the use, then such income cannot be characterized as royalty.

- It further states that the Assessee provides services to its customers using its equipment outside India and there is no 'know-how' or 'intellectual property' involved in the provision of such services by the Assessee.
- Thus, holds that the amount received by the Assessee from its customers in India as consideration for the provision of a service cannot be characterized as royalty for the use or right to use of a process.



**Full Judgement: Adore Technologies Pvt Ltd**

**SNR's Take**

The Tribunal has given a clear understanding on what can or cannot be treated as Royalty. In case, the process and the equipment are available with the service provider, then the consideration received by the provider cannot be said to be a Royalty.



## 4. Trust is eligible for exemption on 'incidental' rental income as primary object of 'education' is fulfilled

**Case of :** M.Ct.M. Chidambaram Chettiar Foundation Vs The DDIT

**Decision by :** ITAT, Chennai

**In favour of :** Assessee

- Assessee-Trust, registered under Section 12AA, is engaged in running an educational institution and letting out the auditorium in the school campus for conducting conferences, lectures, meetings, etc., claimed exemption under Section 11.
- Revenue held that the Assessee's objects falls under the category of advancement of objects of general public utility in regards to letting out of auditorium, since it was in nature of trade, business or commerce done with a profit motive and held Assessee ineligible for exemption for exceeding the threshold prescribed under Section 2(15). CIT(A) also confirmed the assessment order.
- The Tribunal noted that Assessee is a trust running a school and the campus of the school includes an auditorium for conducting conferences, lecture meeting etc., for its students and it is also used for letting out to institutions for promotion of fine arts, educational purposes etc., for which the Assessee received rent. It observed that the auditorium has been let out to general public on the days whenever the auditorium is not in use by or for the purposes of school and emphasised that the Revenue did not controvert the fact that the said auditorium was used for the school, as well as for the purpose of letting out to general public.





- It further observed that the Assessee maintains separate books of accounts to record the receipts from letting out of auditorium. Also, the net receipts from letting out the auditorium is ₹ 25.06 Lacs, which forms only 12.5% of Assessee's gross total income from educational activities.
- Thus, the Tribunal concluded that the Assessee exists for the purpose of education, falling under the category of education under Section 2(15) and the receipts from letting out the auditorium, which is situated within the school campus, to general public for conference meetings etc. is incidental to the educational activity.
- Thus, it held the Assessee to be eligible for exemption under Section 11 since letting out of auditorium is incidental to fulfilment of the object of the trust i.e., education.

**Full Judgement: M.Ct.M. Chidambaram Chettiar Foundation**

**SNR's Take**

The Tribunal has provided a rational judgement that shall go a long way in resolving such disputes. The renting of premises by an educational trust for cultural and educational activities cannot said to be a business activity.

## 5. Management Support Services provided by Foreign Hotel not FTS

**Case of :** Inter-Continental Hotels Group (Asia Pacific) Pte Ltd Vs ACIT

**Decision by :** ITAT, Delhi

**In favour of :** Assessee

- Assessee-Company is incorporated in Singapore and is engaged in hospitality business under different hotel brands in the Asia-Pacific region and is the economic and beneficial owner of various hotel brands including 'Inter-Continental', 'Holiday Inn' and 'Crowne Plaza'.
- During AY 2013-14 & 2014-15, Assessee entered into license agreement with various hotels for use of brand name and received fee of ₹ 8.67 Cr from its Indian Subsidiary for Management Support Services.
- Revenue held that the services rendered in the name of Management Support Services were in the nature of consultancy as technical knowledge, skill and know-how were made available to the subsidiary and such services have to be considered as FTS under Article 12(4)(b) of India-Singapore DTAA as well as Section 9(1)(vii) and accordingly, made addition of the said fee. CIT(A) also dismissed Assessee's appeal.





- The Tribunal observed that the Assessee had been offering license to various hotels in India for use of brand name, the income from which had been offered by Assessee as royalty. The Assessee had entered into Management Support Services agreement at a later point of time with its Indian Subsidiary and accordingly, it is evident that both the agreements are independent of each other and relatively not connected.
- The Tribunal while allowing the Assessee's appeal also relied on coordinate bench ruling in **Starwood Hotels & Resorts** wherein it was held that fees received under centralized service agreement cannot be treated as Fees for Included Services under Article 12(4)(a)/(b) of the India-US DTAA.

**Full Judgement: Inter-Continental Hotels Group (Asia Pacific) Pte Ltd**

**SNR's Take**

The Tribunal has rightly held that providing general services such as accounting and support services cannot be treated as Fees for Technical Services as there is no element of managerial, technical or consultancy services in it.

# CIRCULARS/NOTIFICATIONS:

## 1. CBDT modifies the conditions for reporting interest income as part of SFT:

CBDT issued an Addendum to Notification 2 of 2021 that provided the Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for interest income by which the threshold for non-reporting of interest income for a cumulative interest of ₹ 5,000 has been done away with.

**Read Notification:** [1/2023 \(Systems\)](#)

## 1. Extension of time limit for compliance for claiming exemption due to Covid-19 pandemic:

The Central Board of Direct Taxes (CBDT) has notified the extension of the time limit for compliance to be made for claiming any exemption under section 54.

The Board had issued a circular dated June 25, 2021, which provided relaxation in respect of certain compliances to be made by taxpayers, for the purpose of claiming exemption under the provisions contained in Sections 54 to 54GB.

By way of this circular, CBDT has provided that the compliances to be made by the taxpayers for claiming exemption under sections 54 to 54GB of the Act, for which the last date of compliance falls between April, 2021 and February 28, 2022 may be completed on or before March 31, 2023.

**Read Notification:** [1/2023](#)



# COMPLIANCE CALENDER:

Date	Particulars
07-02-2023	Due date for deposit of Tax deducted/collected for the month of January 2023.
14-02-2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, and 194M in the month of December 2022.
15-02-2023	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2022.



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