



INCOME TAX BULLETIN

MARCH 2023

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JUDICIAL UPDATES

1. Sec.32AC deduction meant only for manufacturing sector

Case of : Infosys Ltd Vs ACIT

Decision by: ITAT, Bangalore

In favour of : Revenue

- For AY 2014-15, Assessee claimed deduction u/s 32AC amounting to Rs.132 Cr on account of investment in new plant and machinery. Revenue disallowed the claim holding that deduction under Section 32AC was to give impetus to the manufacturing sector only and since Assessee's activity of software development falls within the purview of the service sector, it was ineligible to claim the deduction, which was upheld by CIT(A).
- On appeal, examining the background for the introduction of Section 32AC, ITAT observed that the Indian structure was skewed towards the service sector and the base of the manufacturing sector is inadequate and referred to the report of OECD on the Economic Survey of India and other research-based books.
- ITAT further referred to the Budget 2013-14 Speech evidencing that the intention of introducing Section 32AC was to boost the manufacturing sector vis-à-vis service sector.
- Perusing the provisions of Section 32AC, ITAT noted that the main question to be considered is whether the software development activity of the Assessee qualifies as "business" of manufacture or production of any article or thing", and hence, referred to the definition of manufacture u/s 2(29BA) and observed that to qualify as "manufacture", the change should be in a non-living physical object or article or thing. It pointed out that software is intangible and not physical object or article or thing, thus *"at the threshold, software development activity cannot qualify as "manufacture"*
- While rejecting the assessee's contention, the tribunal further stated that the creation or maintenance of software programs, does not result in the transformation of the object or article, or thing into a new and distinct object or article or thing having a different name, character and use or bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.



Full Judgement : [Infosys Limited](#)

SNR's Take

The Tribunal has rightly held that section 32AC was specifically introduced to provide special deductions for the entities engaged in manufacturing activities. Further, merely earning a slight percentage of total revenue from manufacturing activities does not make a service entity eligible for claiming this deduction.

2. LLP, as partner in a partnership firm is eligible for exemption of Sec.10(2A)

Case of : Mulberry Textiles LLP vs ITO

Decision by : ITAT, Bangalore

In favour of : Assessee



- For AY 2020-21, Assessee-LLP claimed exemption under Section 10(2A) for Rs. 20.71 Lacs on the share of profit received from the partnership firm, which was denied by the Revenue, while processing the return under Section 143(1).
- Consequently, Assessee filed a rectification application under Section 154 which was also rejected by the Revenue. CIT(A) dismissed Assessee's appeal and affirmed the disallowance by holding that a firm cannot be a partner in another firm, against which the Assessee preferred an appeal before Tribunal.
- ITAT explained that Section 10(2A) exempts the share of profit received by a person being a partner of a firm which is separately assessed and observed that the term 'firm' as defined under Section 2(23) includes LLP also.
- The Tribunal further observed that there is no restriction on a firm for becoming a partner in other partnership firms, thus a firm can be a partner in other partnership firms.
- Thus, the Tribunal allowed the exemption under Section 10(2A) on share of profit received from the partnership firm to an LLP.



Full Judgement: [Mulberry Textiles LLP](#)

SNR's Take

The Tribunal has given a logical judgment, and which is also in line with the Guwahati HC ruling in Radha Krishna Jalan, wherein it was held that income which is already taxed in the hands of the firm is not taxable in the hands of the partner.

3. Fee for Payroll services is not FTS but 'business income' and not taxable in absence of PE

Case of : DIT Vs IBM India Private Limited

Decision by : High Court, Karnataka

In favour of : Assessee

- IBM USA entered into a global arrangement with Procter and Gamble, USA (P & G USA) for rendering payroll-related services to P&G USA and consequently, Assessee entered into an agreement with P & G India.
- The said services were outsourced to IBM Philippines by Assessee along with certain human resource services for the project.
- Revenue held that the payments made to IBM Philippines were in the nature of FTS and since, Assessee had failed to deduct tax under Section 195, it was assessee-in-default in terms of Section 201(1). While CIT(A) confirmed Revenue's order, ITAT held that the payments made by the Assessee were not chargeable to tax under the India-Philippines DTAA and thus, no tax was required to be deducted.
- On appeal, High Court observed that as far as IBM Philippines is concerned, it works like a sub-contractor under IBM India and earns profit by rendering service to P & G India. Thus, the court stated that IBM Philippines does not provide any technical service to the Assessee.



- The court opined that the income in the hands of IBM Philippines from the Assessee is a business income and that IBM Philippines does not have PE in India thus, it upheld the ITAT order holding that payroll services rendered by IBM Philippines to the Assessee are not technical services.
- Thus, the court pointed out that the ITAT had rightly held that as per Article 7(1) and Article 23, the business profit of IBM Philippines shall be taxable in that State only, accordingly held that the payments received by IBM Philippines shall not be liable for TDS under Section 195 and thus Assessee cannot be deemed as 'assessee-in-default'.

Full Judgement: [IBM India Private Limited](#)

SNR's Take

The Court has ruled upon a very intricate subject wherein it has dissected the issue of treating services as FTS with surgical precision. The court has rightly pointed out that payroll services do not include either of the components of FTS namely, technical, managerial, or consultancy, and thus, cannot be treated as FTS. Further, since, the entity did not have any PE in India, therefore, no tax shall be payable in India as the income is a normal business income.

4. CBDT Circular on allowability of freebies to Doctors, inapplicable to AY 2008-09

Case of : Abbott India Limited Vs ACIT

Decision by : High Court, Bombay

In favour of : Assessee



- For AY 2008-09, Assessee claimed Rs. 48 Cr as expenditure on gifts as a part of sales promotion expenses and Rs.2.24 Cr as expenditure on account of distribution of samples of medicines (physician's sample) as deduction.
- Revenue framed assessment by disallowing 10% of the aforesaid expenditure on estimate basis as the Assessee could not furnish complete details sought by the Revenue. Subsequently, notice under Section 147 was issued to the Assessee in Mar'15, initiating reassessment proceedings on the ground that as per CBDT Circular No.5/2012 read with Indian Medical Council (IMC) Regulation prohibiting medical practitioners and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from the pharmaceutical and allied health sector industries, there was reason to believe that income had escaped assessment as Assessee had claimed such expenditure as deduction.
- Against the notice, the assessee filed a writ petition before the High Court. HC remarked that *"The argument that the claim was allowed contrary to the Board Circular issued in the year 2012 would not by itself authorize the assessing officer unless the jurisdictional conditions prescribed under the proviso to Section 147 had been satisfied, which in the present case, does not appear to have been satisfied at all."*

- The court referred to the said CBDT Circular and explained that pursuant to the amendment of IMC Regulation to include the relationship of medical practitioners with the pharmaceutical and allied health industry, CBDT issued the Circular for sensitizing its officers that receipt of gifts, cash, and travel facilities, and hospitality from the pharmaceutical or allied health sector being prohibited under the MCI Regulations would be inadmissible under Section 37 being prohibited by law.
- The court while accepting the assessee's prayer stated that it is clear that the CBDT Circular referred to the MCI Regulations after its amendment in 2009 and, therefore, neither the Circular nor Regulation 6.8 incorporated w.e.f. Dec 14, 2009 would be applicable to the instant case pertaining to AY 2008-09.

Full Judgement: [Abbott India Limited](#)

SNR's Take

The court has rightly accepted the assessee's writ as the transaction in question pre-dates the date of issue of CBDT Circular prohibiting the transaction in consonance with the IMC regulations.

5. Section 68 additions deleted as Assessee refunded share application money

Case of: Direct Logistics India Private Limited Vs ITO

Decision by: ITAT, Mumbai

In favour of : Assessee

- During AY 2009-10, Assessee-Company received a share application of Rs. 50 Lac from a share applicant owned and controlled by an entry operator. Revenue on the basis of the information received from the Investigation Wing held that the Assessee took accommodation entry under the garb of the share application money from benami concerns of an entry operator.
- Assessee objected to the reassessment proceedings which were subsequently disposed of by relying on the statement of the entry operator and consequently, Revenue treated the share application money as unexplained cash credit under Section 68 on account of Assessee's failure to prove the genuineness of the transaction. CIT(A) dismissed Assessee's appeal.
- Before ITAT, the assessee contended that no shares were actually allotted with the share application money and the said money was refunded back to the share applicant and there was no pending share application money during the year under consideration.
- ITAT referred to the investment agreement entered by the Assessee with a venture capitalist named SIDBI Venture Capital wherein it was agreed to invest in the Assessee through SME Growth Fund in a phased manner. It observed that the Assessee received Rs.50 Lac investment in form of a share application which was subsequently objected to by the venture capitalist and consequently, no shares were issued against the share application of Rs.50 Lac and the amount was duly refunded to the share applicant in the year under consideration.



- ITAT remarked that by refunding the share application money, Assessee had also proved the genuineness of the transaction and accordingly, held that Assessee has discharged its onus and the addition under Section 68 on account unexplained cash credit is liable to be deleted.

Full Judgement: [Direct Logistics India Private Limited](#)

SNR's Take

The Tribunal has delivered a significant ruling that shall go a long way in resolving disputes regarding the treatment of receipts as cash credits u/s 68 in cases where money received as share application is refunded back by the assessee later.

6. In the absence of a specific share in the sale deed, the spouse taxable for notional rent as equal owner

Case of: Shivani Madan vs ACIT

Decision by: ITAT, Delhi

In favour of: Revenue

- Assessee-Individual was subjected to a search that revealed her co-ownership in a house property with her husband. Consequently, a show cause notice was issued to the Assessee as to why the Assessee should not be taxed under the head 'Income from House Property' on the notional income for AY 2011-12.
- Revenue treated the Assessee as the equal owner on the premise that the registered sale deed of the property did not define the actual share of the co-owners. CIT(A) dismissed Assessee's appeal.
- Before ITAT, Assessee contended that the property is co-owned with the husband but her contribution is only limited to 5.4% of the property, therefore, taxing as an equal owner was not justified.
- Revenue contended that ownership can only be determined as per the mutation records which clearly reflect the name of the Assessee and her husband without specifying their shares. It also contended that in absence of any definite and ascertainable share of co-owners, a share to the extent of 50% has to be taxed in the hands of co-owners.



- The Tribunal while dismissing the assessee's appeal noted that the sale deed only spoke of joint ownership of the property by the Assessee and her husband without their definite and ascertainable share. Thus, it observed that the total cost of the property duly stated by Assessee in the assessment proceedings does not match with the sale consideration as per the sale deed and accordingly, Assessee's claim that she is joint owner of the property to the extent of 5.4% only, is baseless.



Full Judgement: [Shivani Madan](#)

SNR's Take

The Tribunal has ruled upon a very recurring issue in the taxation of rental income where the share in the property of co-owners is not properly defined. The tribunal has given a reasonable judgment by treating such income in equal proportion in the hands of various co-owners.

CIRCULARS/NOTIFICATIONS:

1. CBDT Notifies Centralised Processing of Equalisation Levy Statement Scheme, 2023:

The Central Board of Direct Taxes (CBDT) released the notification of Centralised Processing of Equalisation Levy Statement Scheme, 2023 for processing of statements furnished under section 167 of the Finance Act, 2016.

According to the notification every assessee or e-commerce operator shall furnish the Equalisation Levy Statement under section 167(1) of the Finance Act within the time stipulated under sub-rule (2) of rule 5 of the Equalisation levy Rules, 2016.

Read Notification: [3/2023](#)

2. CBDT notifies ITR Forms for Assessment Year 2023-24:

The CBDT has notified the ITR forms for the assessment year 2023-24. The Board has notified the Income-tax (First Amendment) Rules, 2023, which shall come into force with effect from April 1, 2023.

The Board has notified the Indian Income Tax Return (ITR) Forms, namely ITR-1 SAHAJ, ITR-2, ITR-3, ITR-4 SUGAM, ITR-5, ITR-6, and ITR-V, and the India.

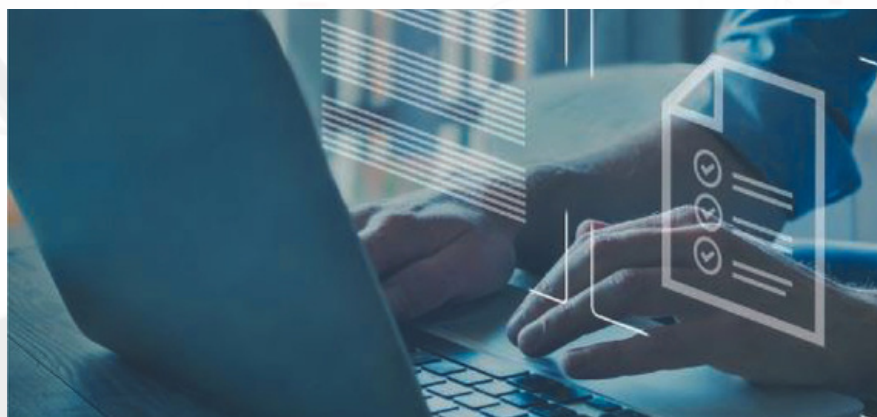
Read Circular: [4/2023](#)

3. CBDT amends various forms and format of reports:

TCBDT notified Income Tax (Third Amendment) Rules, 2023 to amend the Income Tax Rules, 1962 by which various forms and formats of reports have been modified. The list of modified forms is as follows:

- Form 16CC
- Rule 17B has been substituted by a new rule that deals with audit reports in case of charitable or religious trusts etc.
- Form 10BB.

Read Circular: [7/2023](#)



COMPLIANCE CALENDER:

DATE	PARTICULARS
02-03-2023	The due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB, and section 194M in the the month of January 2023.
07-03-2023	Due date for deposit of Tax deducted/collected for the month of February 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without the production of an Income-tax Challan.
15-03-2023	Fourth instalment of advance tax for the assessment year 2023-24.
15-03-2023	The due date for payment of the whole amount of advance tax in respect of the assessment year 2023-24 for the assessee covered under the presumptive scheme of section 44AD / 44ADA.
17-03-2023	The due date for issuing of TDS Certificate for tax deducted under sections 194-IA, 194-IB, and 194M in the month of January 2023.
30-03-2023	The due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB, and section 194M in the month of February 2023.
31-03-2023	Country-By-Country Report in Form No. 3CEAD for the previous year 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group.
31-03-2023	The last date for linking Aadhaar with PAN is 31st March 2023. PAN will become inoperative from 1st April 2023 if it is not linked with Aadhaar.

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