

INCOME TAX BULLETIN

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1. Non-issuance of Sec.143(2) notice is a 'foundational infirmity' that shall leave reassessment redundant:

Case of: Rupinder Kaur Arora Vs ACIT

Decision by: ITAT, Delhi

Order Date: January 14, 2026

In favour of: Assessee

Appeal No.: ITA No. 513/Del/2025

Facts:

- The assessee was subjected to reassessment proceedings under Section 147 of the Income-tax Act, 1961. Notice under Section 148 was issued and reassessment was completed under Section 147 read with Section 143(3).
- The assessee contended that no notice under Section 143(2) was issued during the reassessment proceedings. Screenshots from the ITBA portal reflected issuance of notice under Section 148 but did not show issuance of notice under Sections 143(2) or 142(1). The assessment order and the order of the CIT(A) did not record the date or mode of issuance of notice under Section 143(2).
- The CIT(A) dismissed the appeal, following which the matter was carried before the ITAT.

Issues Involved:

- Whether reassessment completed under Section 147 read with Section 143(3) is valid in the absence of issuance of statutory notice under Section 143(2)?



Tribunal Observations:

- The Tribunal observed that neither the assessment order nor the appellate order evidenced issuance of notice under Section 143(2).
- Mere reference to electronic communications was held insufficient to establish compliance with the statutory mandate.
- The Tribunal relied on the Supreme Court ruling in Assistant Commissioner of Income Tax v. Hotel Blue Moon, which held that issuance of notice under Section 143(2) is mandatory.
- The omission to issue such notice was held to be a jurisdictional defect and not a curable procedural irregularity.

Tribunal Decision:

- The Delhi ITAT held that issuance of notice under Section 143(2) is a mandatory jurisdictional requirement for completing assessment under Section 143(3), including in reassessment proceedings under Section 147.
- Non-issuance renders the reassessment void ab initio. Accordingly, the reassessment order was quashed and the assessee's appeal was allowed.



Full Judgement: [Rupinder Kaur Arora](#)

Key Takeaways

- *Notice under Section 143(2) is mandatory even in reassessment cases. Non-issuance is a jurisdictional defect, not a procedural lapse.*
- *Revenue must demonstrate actual issuance of the notice.*

2. Tribunal raps revenue department for arbitrary orders passed by disregarding precedents:

Case Name: SFDC Ireland Limited vs CIT (Int. Tax)

Decision by: Delhi High Court

Order Date: 14th January 2026

In favour of: Assessee

Appeal No.: W.P.(C) 16354/2025 CM APPL. 66967/2025

Facts:

- The assessee, a company incorporated in Ireland, filed an application under Section 197 of the Income-tax Act, 1961 seeking issuance of a certificate for deduction of tax at Nil rate.
- The competent authority, however, issued a certificate directing tax deduction at 10%.
- The Revenue's stance was premised inter alia on the fact that a Power of Attorney holder in India undertook certain formalities and filings (including Forms 13 and 10F).
- Similar orders had been passed in earlier years despite prior favourable judgments of the High Court in the assessee's own case.
- Aggrieved, the assessee filed a writ petition before the Delhi High Court challenging the arbitrary issuance of the 10% TDS certificate.

Issues Involved:

- Whether the competent authority was justified in issuing a certificate under Section 197 directing deduction of tax at 10%, instead of Nil rate, in absence of any finding that the assessee was resident in India or had a Permanent Establishment (PE) in India?



High Court Observations:

- The Court observed that merely because a Power of Attorney holder in India carried out certain functions, it could not be concluded that the foreign company was resident in India. Section 6(3) requires that the entire control and management of the company's affairs be situated in India, which was not demonstrated.
- The impugned order did not record any finding that the assessee was resident in India or had a PE in India. In absence of such foundational findings, directing TDS at 10% was unjustified.
- Filing of Forms 13 and 10F through a person in India did not alter the assessee's residential status nor its entitlement to a Nil deduction certificate.
- The Court held that discretion under Section 197 is not unbridled. The mere use of the word "may" does not confer unfettered discretion on the Assessing Officer. The authority must act in a reasoned, pragmatic and justice-oriented manner.
- The Court noted that the competent officer had overlooked earlier judgments of the High Court in the assessee's own case, which militated against principles of judicial discipline.
- The Court made strong observations that arbitrary TDS orders undermine the ease of doing business environment and discourage foreign investment.
- It remarked that ease of doing business must reflect in executive and quasi-judicial actions, not merely in policy statements.

High Court Decision:

The Bombay High Court:

- Quashed the impugned order and the certificate directing TDS at 10%.
- Directed the competent authority to issue a certificate for deduction of tax at Nil rate, not only for AY 2026-27 but also for subsequent years.
- Held that the impugned order was arbitrary and not supported by any legal or factual foundation.

Full Judgement: [SFDC Ireland Limited](#)

Key Takeaways

- *Discretion under Section 197 must be exercised judiciously and with recorded reasons. Absence of findings on residency or PE renders a higher-rate TDS certificate unsustainable*

3. Revision u/s 23 of Black Money Act dismissed as foreign assets disclosed in 'Schedule FA' and nothing prejudicial to Revenue's interest could be established:

Case of: Chintan Navnitlal Parikh vs PDIT (Investigation)

Decision by: ITAT Ahmedabad

Order Date: 19 January 2026

In favour of: Assessee

Appeal No.: BMA No. 1/Ahd/2025

Facts:

- The assessee was a beneficiary of a discretionary trust established in Jersey by his father.
- The assessee made a declaration under Section 59 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 (BMA) in respect of undisclosed foreign assets.
- The declaration was accepted by the CIT(TP), and the assessee paid the applicable tax and penalty.
- The assessee had also disclosed foreign bank accounts and assets in Schedule FA of his Income Tax Return.
- The DDIT completed the assessment after conducting enquiries and verifications.

Subsequently, the Principal Director of Income-tax (Investigation) invoked revisionary jurisdiction under Section 23 of BMA, alleging that the assessment order was erroneous and prejudicial to the interests of the Revenue, inter alia on grounds of:

- Alleged existence of two undisclosed foreign bank accounts;
- Alleged receipt of further funds not examined by the Assessing Officer;
- Inadequate enquiry by the DDIT.

The assessee challenged the revision order before the ITAT.

Issues Involved:

- Whether the PDIT was justified in invoking revisionary powers under Section 23 of the BMA on the ground that the assessment order was erroneous and prejudicial to the interests of the Revenue?



Tribunal Observations:

- The Tribunal observed that the revisionary powers under Section 23 of the BMA are materially similar to those under Section 263 of the Income-tax Act. For valid assumption of jurisdiction, the order must be both erroneous and prejudicial to the interests of the Revenue.
- The DDIT had carried out sufficient enquiries and verifications while passing the assessment order. Hence, Section 23(9)(a) (lack of enquiry) was not attracted.
- The alleged foreign bank accounts were duly disclosed in Schedule FA of the ITR. The Revenue failed to bring on record any additional undisclosed accounts owned or operated by the assessee.
- The Tribunal observed that there was no need to invoke Section 23 to re-examine matters already forming part of Schedule FA disclosures.
- The assessee had valued the trust assets at FMV as per Rule 3(1)(c) and had paid the requisite tax and penalty under the compliance window. The PDIT failed to substantiate the allegation of further unaccounted funds or to demonstrate where such funds were allegedly parked.
- The properties referred to by the PDIT were already part of the disclosure based on the trust's balance sheet submitted under Section 59.
- The Tribunal noted that there was no infraction of CBDT Circular No. 15 of 2015, nor was the assessment order contrary to any judicial decision.
- The Revenue could not demonstrate how the assessment order was prejudicial to its interests.

Tribunal Decision:

The Ahmedabad ITAT held that:

- The twin conditions of Section 23(2) of the BMA – the order being erroneous and prejudicial to the interests of the Revenue – were not satisfied.
- The revisionary authority acted beyond jurisdiction in invoking Section 23.

Accordingly, the revision order passed by the PDIT was set aside and the assessee's appeal was allowed.

Full Judgement: [Chintan Navnitlal Parikh](#)

Key Takeaways

- *Revision under Section 23 of the BMA requires the order to be both erroneous and prejudicial to Revenue. Adequate enquiry by the Assessing Officer bars revision on the ground of "inadequate enquiry." Further, disclosures in Schedule FA and under Section 59 of BMA carry significant evidentiary value.*

4. Aircraft MRO-services not FTS under India–Canada DTAA as ‘Make available’ test not satisfied:

Case Name: Bombardier Inc vs ACIT

Decision by: ITAT, Delhi

Order Date: 10 December 2025

In favour of: Assessee

Appeal No.: ITA No. 1022/Del/2025

Facts:

- The assessee, a Canadian tax resident engaged in manufacturing aircraft and providing aftermarket support services, entered into a per-flight-hour support agreement with SpiceJet.
- The agreement covered supply of parts, consumables, replacements, and maintenance, repair and overhaul (MRO) services.
- During the relevant year, the assessee received ₹ 41.46 crore for such services.
- The repairs and refurbishment of components were carried out outside India and the serviced parts were returned to the Indian customer.

The Assessing Officer taxed the consideration as:

- Fees for Technical Services (FTS) under Section 9(1)(vii) of the Income-tax Act, and
- Fees for Included Services (FIS) under Article 12(4) of the India–Canada DTAA, alleging satisfaction of the “make available” condition.
- The DRP upheld the assessment, and the matter was appealed before the ITAT.

Issues Involved:

- Whether consideration received for aircraft MRO services is taxable as FTS/FIS under Article 12(4) of the India–Canada DTAA, particularly when the “make available” test is not satisfied?



Tribunal Observations:

- The Tribunal noted that the services involved repair and refurbishment of aircraft components outside India. The agreement contemplated operational support and maintenance, not transfer of technical knowledge.
- The Tribunal emphasized that under Article 12(4) of the India–Canada DTAA, technical knowledge or skill must be made available to the service recipient in such a manner that the recipient can independently apply the same in future without recourse to the service provider.
- In the present case, no technical know-how, design, process, or methodology was transferred to SpiceJet enabling it to perform MRO services independently.
- The Tribunal relied on the jurisdictional High Court ruling in DIT v. Goodrich Corporation, which held that aircraft maintenance and repair services do not satisfy the “make available” condition in absence of technology transfer.
- It also referred to the coordinate bench ruling in Rockwell Collins Southeast Asia Pte. Ltd. Vs ACIT, where similar MRO services were held to be non-taxable under treaty provisions.
- While the services may be technical in nature, they did not meet the dual requirement of rendering technical services and making available technical knowledge as mandated by Article 12(4).

Tribunal Decision:

- The Delhi ITAT held that the consideration received by the assessee towards MRO services does not qualify as FTS/FIS under Article 12(4) of the India–Canada DTAA, as the “make available” test was not satisfied.
- Accordingly, the addition made by the Assessing Officer was deleted and the assessee’s appeal was allowed.



Full Judgement: [Bombardier Inc](#)

Key Takeaways

- *For taxation under Article 12(4) of the India–Canada DTAA, the “make available” condition is mandatory. Mere rendering of technical services is insufficient without transfer of know-how enabling independent application.*

5. Written contracts & interest charges are not 'essential ingredients' for proving loan genuineness:

Case of: Sabbirbhai Abdeali Gangardiwala vs ITO

Decision by: ITAT, Ahmedabad

Order Date: 19 January 2026

In Favour of: Assessee

Appeal No.: I.T.A. No. 1519/Ahd/2025

Facts:

- The assessee received unsecured loans aggregating to ₹39 lakhs from three individuals.
- The loans were supported by confirmations and were routed through banking channels.
- Two of the lenders were NRIs carrying on business outside India, from where the funds were sourced.
- The Assessing Officer made an addition under Section 68 treating the loans as unexplained cash credits.
- The CIT(A) upheld the addition on grounds such as absence of written loan agreements, non-charging of interest, and non-repayment of loans even after five years.
- The assessee preferred an appeal before the ITAT.

Issues Involved:

- Whether unsecured loans can be treated as non-genuine under Section 68 merely due to absence of written agreements, non-charging of interest, or delayed repayment.



Tribunal Observations:

- The Tribunal held that the assessee had discharged the primary onus by furnishing confirmations, establishing identity of lenders, and demonstrating that transactions were carried out through banking channels.
- The Revenue did not dispute the confirmations filed nor bring any material on record to disprove the source of funds, particularly in respect of NRI lenders.
- The Tribunal observed that there is no statutory requirement that a loan must be backed by a written agreement. Loans may also be advanced on oral terms.
- It is not uncommon for friendly loans to be advanced without charging interest.
- Non-repayment of loans over a period of time, by itself, does not render the transaction non-genuine.
- The reasons relied upon by the CIT(A) were held not to constitute essential ingredients for determining genuineness under Section 68.

Decision:

- The Ahmedabad ITAT held that the addition of ₹39 lakhs under Section 68 was unsustainable, as the assessee had sufficiently established the identity, creditworthiness, and genuineness of the loan transactions.



Full Judgement: [Sabbirbhai Abdeali Gangardiwala](#)

Key Takeaways

- *Written loan agreements are not mandatory to establish genuineness under Section 68. Interest-free or long-outstanding loans are not per se non-genuine. Once identity, creditworthiness, and banking trail are established, addition under Section 68 cannot be sustained without contrary evidence.*

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