SNR & COMPANY
CHARTERED ACCOUNTANTS

INCOME TAX BULLETIN

JUNE 2025

Delhi, Pune, Bangalore

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- Circulars/ Notifications:

1. AWS Receipts for Cloud Computing Services Not Taxable as Royalty under India-US DTAA

Case of: CIT (Int. Tax) v. Amazon Web Services, Inc.
Decision by: High Court, Delhi
Order Date: May 29, 2025
Appeal No.: ITA 150/2025 & CM APPL. 29405/2025
In favour of: Assessee (Amazon Web Services, Inc)

Facts:

- Amazon Web Services, Inc ("Assessee"), a US-based entity, provided cloud computing services such as storage, hosting, and bandwidth to various Indian customers, including Snapdeal Pvt. Ltd. These services were availed through AWS's infrastructure without any transfer of ownership or control over the equipment or intellectual property.
- During assessment, the Revenue received information that Snapdeal had made remittances to AWS for "hosting and bandwidth charges" without deduction of tax at source. Consequently, reassessment proceedings were initiated to examine the taxability of these payments as 'royalty' under the India–US DTAA.

Issues Involved:

- Whether the payments received by AWS for cloud computing services amounted to 'royalty' under Article 12(3) of the India-US DTAA.
- Whether the customers acquired any right to use equipment, software, or intellectual property of AWS.
- Whether the nature of services qualified as 'Fees for Technical Services' (FTS).

High Court Observations:

- **No Equipment or IPR Usage Rights:** The Court observed that the customers merely used the services provided by AWS and did not acquire any right to use or control AWS's underlying infrastructure or software.
- **No Commercial Exploitation:** The standard user agreement did not transfer any right to commercially exploit any technology, know-how, or process to the customers.
- **Nature of Payment:** Charges were for availing hosted services and not for use of any equipment or transfer of intellectual property.
- **ITAT Finding Affirmed:** The Court upheld the Income Tax Appellate Tribunal's conclusion that the services did not involve any transfer of rights under Article 12(4)(b) of the DTAA.

Key Judicial Precedents Relied Upon

- Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (SC)
- New Skies Satellite BV v. ADIT (SC)
- Salesforce.com Singapore Pte. Ltd. (ITAT Delhi)
- MOL Corporation (ITAT)
- Telstra Singapore Pte. Ltd. (ITAT Delhi)
- Urban Ladder Home Décor Solutions Pvt. Ltd. (Karnataka HC)
- Asia Satellite Telecommunications Co. Ltd. (Delhi HC)

High Court Decision:

- The Delhi High Court held that:
  - The payments made to AWS for cloud computing services do not qualify as "royalty" under Article 12 of the India-US DTAA.
  - The customers did not gain any commercial or legal right to use AWS's infrastructure, processes, or software.
  - No part of AWS's proprietary technology or intellectual property was transferred to the customers.
  - Accordingly, such payments are not taxable in India and do not require withholding under Section 195 of the Income-tax Act, 1961.

Full Judgement: Amazon Web Services Inc.

SNR's Take

- *Standard cloud service agreements should be carefully reviewed to confirm no grant of commercial exploitation rights as provision of cloud computing services without transfer of IPR or control over infrastructure does not amount to royalty under Article 12 of India–US DTAA.*
- *This decision aligns with the Supreme Court's evolving jurisprudence on software and digital services taxation, reaffirming the principle of source rule and characterization under treaty law.*

2. Additions Based on Dumb Documents in Form of Loose Diaries Unsustainable.

Case of: Sri Adichunchanagiri Shikshana Trust v. DCIT
Decision by: ITAT, Bangalore
Order Date: May 22, 2025
Appeal No.: ITA No. 1096/Bang/2024
In favour of: Assessee

Facts:

- Sri Adichunchanagiri Shikshana Trust, an educational trust, was subjected to a search operation during which several diaries were seized. These diaries, allegedly maintained by one Mr. H.B. Shivarm (who was neither a trustee nor an employee of the Trust), recorded alleged receipt/refund of unaccounted fees, unrecorded payments to agents, and other unsubstantiated financial transactions.

- Based on the contents of these diaries, the Assessing Officer made the following additions:
  - ₹7.65 Cr on account of alleged non-receipt or refund of fees
  - ₹76.56 Lacs as unaccounted marketing and commission expenditure
  - ₹7.74 Cr as alleged unaccounted income from fees

Issues Involved:

- Whether loose sheets/diaries seized during the search constitute credible evidence for additions under Sections 69A and 69C.

- Whether additions made without any corroborative evidence are sustainable in law.

- Whether unsubstantiated documents maintained by a third party, not connected to the Trust, can be relied upon.

ITAT Observations:

- On the Nature of Evidence: The Tribunal noted that all additions were based solely on diaries seized during search, authored by a third party who had no employment or fiduciary relationship with the Trust.

- Absence of Corroboration: There were no statements from parents of students (allegedly paying or receiving fee refunds) or from agents who purportedly received commission. No independent enquiry or verification was carried out by the Revenue to support the diary entries.

On Loose Sheets/Diaries as Evidence:

- ITAT relied on prior rulings including:
  - Padmasri Dr. D.Y. Patil University (ITAT)
  - Sri Devaraj Urs Educational Trust for Backward Classes (ITAT)
  - Sunil Kumar Sharma (Karnataka HC

  These precedents held that loose sheets or uncorroborated diaries not forming part of regular books of accounts do not constitute admissible or reliable evidence under income tax proceedings.

Lack of Inquiry on Contradictions:

- The Revenue did not provide any explanation on how contradictions in the statements of the person who maintained the diaries (Mr. Shivarm) were addressed.

Decision:

The ITAT deleted all three additions totaling approximately ₹16 Cr, holding that:

- The diaries were "dumb documents" lacking any corroborative or supporting evidence.
- No additions can be sustained based on uncorroborated third-party documents.
- The Revenue's failure to make further inquiries or bring additional material on record rendered the additions legally unsustainable.

Full Judgement: Sri Adichunchanagiri Shikshana Trust

SNR's Take

This ruling reiterates the importance of proper evidentiary standards during assessment, especially in search cases. Loose papers or unverified diaries not forming part of books of accounts cannot form the sole basis for additions under the Income-tax Act. Revenue must establish a nexus between the seized documents and the assessee through independent corroborative evidence.

3. Receipts by Ernst & Young U.S. for Advisory Services are not taxable as FIS Under India–US DTAA

Case of: Ernst and Young U.S. LLP v. ACIT
Decision by: ITAT, Delhi
Order Date: May 19, 2025
Appeal No.: ITA No. 2168/Del/2023
In favour of: Assessee

Facts:

- Ernst & Young U.S. LLP (the Assessee), a U.S.-based member of the global EY network, received payments from its Indian affiliate for providing advisory and analytical services. The services were rendered by professionals including economists, engineers, MBA graduates, and technical personnel.
- The Revenue contended that such receipts constituted Fees for Included Services (FIS) under Article 12(4)(b) of the India-US DTAA, invoking the "make available" clause. It also argued that the services did not qualify under Article 15(2) (Professional Services) since the personnel involved were not members of recognized professional bodies like ICAI, MCI, or BCI.

Issues Involved:

- Whether the services rendered by EY U.S. professionals qualify as “professional services” under Article 15(2) of the India–US DTAA?
- Whether the receipts for such services are taxable in India as “Fees for Included Services” under Article 12(4)(b) of the DTAA?

ITAT’s Observations:

- **Definition of ‘Professional Services’:** The Tribunal held that Article 15(2) provides an inclusive, not exhaustive, definition. It explicitly mentions categories such as scientists, literary persons, teachers, and engineers—many of whom are not subject to regulation by any professional body.
- **Rejecting Revenue’s Narrow Interpretation:** The ITAT disagreed with the Revenue's position that Article 15 applies only to professionals governed by statutory councils (like ICAI or BCI). It stated that such a reading would be tantamount to re-writing the treaty provisions.
- **“Make Available” Test Not Satisfied:** Referring to its own prior ruling in Assessee’s case for AY 2021–22, the Tribunal reiterated that for a payment to be treated as FIS, technical knowledge, skill, or experience must be made available to the Indian entity. In this case, no such transfer occurred.
- **Harmonizing Domestic and Treaty Law:** ITAT referred to Explanation (a) to Section 194J of the Income-tax Act, which includes “engineering” and other professions notified by CBDT—supporting a broader view of what qualifies as “professional services”.

ITAT Decision:

- The services fall squarely under Article 15(2) as "professional services."
- The receipts are not taxable in India as Fees for Included Services (FIS) under Article 12(4)(b) since the "make available" condition was not met.
- The Revenue's restrictive interpretation of Article 15(2) is incorrect in law and inconsistent with both treaty language and interpretative jurisprudence.

Full Judgement: Ernst and Young U.S. LLP

SNR's Take

This decision aligns with existing judicial precedents on DTAA interpretation, especially in the context of cross-border advisory and consultancy services. The ruling affirms that Article 15(2) of the India–US DTAA includes a wide spectrum of services, even if the professionals are not members of Indian regulatory bodies.

4. Compensation for Non-Transfer of Shares Not Deductible u/s 48 While Computing LTCG

Case of: Fusion Lastek Technologies Pvt. Ltd. v. DCIT
Decision by: ITAT, Hyderabad
Order Date: May 22, 2025
Appeal No.: ITA No. 1094/Hyd/2024
In favour of: Revenue

Facts:

- Fusion Lastek Technologies Pvt. Ltd. (the Assessee) had initially entered into an agreement to sell its shares in HIPL (a joint venture with Harsco Corporation, USA) to OXEECO. The Assessee received ₹9.83 crore as advance from OXEECO.
- However, due to delays in completing the formalities, OXEECO opted out of the transaction. As part of a mutual resolution, the Assessee paid ₹1.75 crore to OXEECO as compensation. Subsequently, the Assessee sold the same shares of HIPL to another entity—Harsco Investments Europe BV—and while computing long-term capital gains on this sale, it claimed ₹74.19 lakh (being a proportion of the ₹1.75 crore) as deductible under Section 48.
- The Assessing Officer disallowed this claim, and the CIT(A) upheld the same.

Issues Involved:

- Whether compensation paid to a third party (OXEECO) for cancellation of a separate, earlier share sale agreement can be treated as an expenditure incurred "wholly and exclusively in connection with" the transfer of shares to another entity under Section 48 for the purpose of computing long-term capital gains.

ITAT's Observations:

- The Tribunal noted that the share transfer transactions involving OXEECO and Harsco Investments were independent and distinct in nature.
- It found no direct nexus between the compensation paid to OXEECO and the actual transfer of shares to Harsco Investments.
- The compensation agreement with OXEECO arose out of commercial decisions of the parties and was not a statutory obligation or legal compulsion for effecting the subsequent transfer of shares.
- Citing the language of Section 48, ITAT emphasized that the allowable expenses must be wholly and exclusively connected to the transfer that gives rise to capital gains, which was not satisfied in this case.

Decision:

- The ITAT upheld the lower authorities' decision, disallowing the ₹74.19 lakh deduction under Section 48. It held that the expenditure was not incurred in connection with the transfer of shares to Harsco Investments, and hence not allowable as a deduction in computing long-term capital gains.

Full Judgement: Fusion Lastek Technologies (P) Ltd.

SNR's Take

For deductibility under Section 48, the expenditure must be directly linked to the actual transfer transaction giving rise to capital gains. Compensation arising from settlement of unrelated commercial arrangements—even if pertaining to the same asset—is not allowable unless it facilitates or is indispensable to the actual transfer.

5. Transfer of Tenancy rights is taxable under capital gains and not as other income:

Case of: Vasant Nagorao Barabde vs DCIT
Decision by: ITAT, Mumbai
Appeal No.: ITA No. 5372/MUM/2024
In Favour of: Assessee
Date of Order: May 22, 2025

Facts:

- The assessee, Mr. Vasant Nagorao Barabde, and his daughter were tenants in a property under a registered tenancy arrangement. During the relevant Assessment Year (AY 2018-19), a registered agreement for Permanent Alternate Accommodation (PAA) was executed as part of a redevelopment project. Pursuant to this, the tenancy rights were surrendered, and in exchange, a new flat was allotted to the assessee.

- The Assessing Officer (AO), observing that the PAA agreement bore the name of the assessee as the first holder, treated the entire value of the new flat as a benefit arising without adequate consideration and invoked Section 56(2)(x)(b)(B) to make an addition under the head 'Income from Other Sources'.

Issues Involved:

- Whether the allotment of a new flat in lieu of surrendered tenancy rights constitutes a transfer of a capital asset taxable under the head 'Capital Gains' or a benefit chargeable under Section 56(2)(x)(b)(B).

- Whether the assessee is eligible to claim deduction under Section 54F for investment in the new residential property.

Tribunal Observations:

- The Tribunal acknowledged that the surrender of tenancy rights in exchange for a new flat constituted a transfer of a capital asset, attracting the provisions of Section 45 read with Section 48 of the Income-tax Act.

- It referred to the Supreme Court ruling in D.P. Sandu Bros. Chembur Pvt. Ltd. [273 ITR 1 (SC)], which held that tenancy rights are capital assets and their surrender results in a taxable capital gain.

- It held that once income is clearly covered under a specific head—Capital Gains—it cannot be taxed under another head, such as Income from Other Sources, even if certain conditions of Section 56 may appear applicable.

- The Tribunal noted that both the assessee and his daughter were parties to the tenancy and the PAA agreement, and thus the AO's reliance on the order of names in the agreement was misplaced.

- On the eligibility of Section 54F deduction, the Tribunal referred to the ruling in Goetze (India) Ltd. [284 ITR 323 (SC)] to hold that the assessee was eligible for deduction under Section 54F, since the new flat was acquired in consideration of surrender of the tenancy right.

Tribunal Decision:

- The ITAT deleted the addition made under Section 56(2)(x)(b)(B), holding that the impugned transaction was clearly a transfer of tenancy rights taxable under the head 'Capital Gains'.
- It also allowed the assessee's claim for deduction under Section 54F, ruling that the new residential property was acquired in consideration of the surrendered tenancy and hence eligible for exemption.

Full Judgement: Vasant Nagorao Barabde

SNR's Take

This case reinforces judicial clarity on the non-applicability of Section 56 in genuine capital asset transfer situations, especially in redevelopment/re-housing contexts. Tenancy rights are capital assets and their surrender in exchange for property is a transfer liable to capital gains tax under Section 45. Further, section 54F relief is available for reinvestment in a residential house even where consideration is received in kind (i.e., new flat in exchange for tenancy rights).

6. Income from sale of 'Button Mushrooms' grown in factory not 'Agricultural Income' u/s 2(1A)

Case of: British Agro Products (India) Pvt. Ltd. vs CIT
Decision by: Madras High Court
In Favour of: Revenue
Date of Order: May 27, 2025

Facts:

- The assessee, British Agro Products (India) Pvt. Ltd., was engaged in the cultivation and sale of white button mushrooms grown under controlled conditions within factory premises. Initially, the assessee treated such income as 'business income' for AY 2017–18. However, following the ITAT Special Bench decision in Inventaa Industries Pvt. Ltd., the assessee revised its return under Section 139(4) and declared 'Nil income', treating the income as 'agricultural income' exempt under Section 10(1).
- The Assessing Officer rejected this claim, holding that mushroom cultivation in a factory setup does not meet the criteria under Section 2(1A) for agricultural income.

Issues Involved:

- Whether income from the sale of mushrooms grown in a factory under controlled conditions qualifies as 'agricultural income' under Section 2(1A), and thus exempt under Section 10(1).

High Court Observations:

- The High Court examined the three components of Section 2(1A), which defines "agricultural income":
  - **Sub-clause (a):** Income derived from rent or revenue from land used for agricultural purposes.
  - **Sub-clause (b):** Income from agricultural operations performed on such land.
  - **Sub-clause (c):** Income attributable to buildings on such land.
- It emphasized that both sub-clauses (a) and (b) refer to land used for agricultural purposes, which is not defined in the Act but interpreted based on common law principles.
- The Court held that for income to qualify under sub-clause (b), it must be from land used for agricultural purposes, not from factory-based production.
- The mushrooms in question were grown in a climate-controlled factory environment, and not on any agricultural land. Thus, the sine qua non—use of land for agricultural operations—was absent.
- The expression "such land" in sub-clause (b) clearly refers to "agricultural land", implying that land must be a source of the income, not just incidental to it.
- It further held that the activity did not qualify under any of the three conditions stipulated in sub-clause (c) either.
- While acknowledging the ITAT's reliance on the Inventaa Industries decision, the Court stated that the ITAT had failed to conduct a proper analysis vis-à-vis the statutory definition under Section 2(1A).

Decision:

- The Madras High Court dismissed the assessee's appeal, affirming that income from the sale of mushrooms grown in a factory under controlled conditions does not qualify as agricultural income under Section 2(1A), and is therefore not eligible for exemption under Section 10(1).

Full Judgement: British Agro Products (India) (P) Ltd.

SNR's Take

This decision strengthens the principle that "agricultural income" must originate from traditional land-based operations, not mere biological growth under artificial conditions. Cultivation under artificial or factory conditions, even of natural produce like mushrooms, does not qualify as agricultural activity unless the core requirement of use of land for agricultural purposes is met.

Circulars/ Notifications:

1.CBDT notified various ITR Forms for AY 2025-26:

The CBDT has notified the revised Income Tax Return forms from ITR-1 to ITR-7 for FY 2024-25 (AY 2025-26). These forms have been notified with several key changes in the ITR forms. These revised ITR forms aim to increase transparency, compliance, and accuracy.

Read Circular: 41/2025 [ITR-1 & 4]
42/2025 [ITR-5]
43/2025 [ITR-2]
44/2025 [ITR-6]
47/2025 [ITR-7]

2. CBDT Notified Form ITR U for A.Y. 2025-26:

CBDT notified revised form for updated return filed u/s 139(8A).

Read Circular: 49/2025

3. CBDT extends ITR filing due date to September 15:

CBDT extends due date for filing ITRs for non-audit cases, from July 31 to September 15, on account of significant revisions in ITR forms.

Read Circular: 06/2025

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