DGA GLOBAL
ADDING VALUE TO BUSINESS

Newsletter February 2025
(covering updates for the the month of January)

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REGULATORY UPDATE
INCOME TAX

❖ **CBDT Notification No. 1/2025 dated 02.01.2025**

In exercise of the powers conferred by the Income-tax Act, 1961 (IT Act,1961), the Central Government (CG) hereby notifies that no deduction of income-tax shall be made on the payments received by the National Credit Guarantee Trustee Company Limited, being a company established and wholly financed by the CG for the purposes of operating credit guarantee funds established and wholly financed by CG as referred to in sub-clause (i) of clause (46B) of section 10 of the said Act.

❖ **CBDT Notification No. 2/2025 dated 02.01.2025**

In exercise of the powers conferred by IT Act Act,1961 the CG hereby notifies that no deduction of income-tax shall be made on the payments received by a credit guarantee fund established and wholly financed by the CG and managed by the National Credit Guarantee Trustee Company Limited as referred to in sub-clause (ii) of clause (46B) of section 10 of the said Act.

❖ **CBDT Notification No. 3/2025 dated 02.01.2025**

This notification specifies that no deduction of tax shall be made u/s 194Q of the said Act by a person, being a buyer, in respect of purchase of goods from a Unit of IFSC, being a seller, subject to the following conditions, namely: -

a. the seller shall –
   (i) furnish a statement-cum-declaration in the format provided in Form No. 1 to the buyer giving details of previous years relevant to the ten consecutive assessment years for which the seller opts for claiming deduction u/s 80LA(1A) and 80LA(2) of the said Act; and
   (ii) such statement-cum-declaration shall be verified in the manner specified in the said Form, for each previous year relevant to the ten consecutive assessment years

b. the buyer shall –
   (i) not deduct tax on payment made or credited to the seller after the date of receipt of copy of the statement- cum-declaration; and
   (ii) furnish the particulars of all the payments made to the seller on which tax has not been deducted in the statement of deduction of tax referred to in section 200(3) of the said Act read with rule 31A of the Income-tax Rules, 1962.

The relaxation shall be available to the seller only during the said previous years as declared by the seller in the said Form for which deduction u/s 80LA of the said Act is being opted and the buyer shall be liable to deduct tax on payments made or credited for any other year.

❖ **CBDT Notification No. 6/2025 dated 06.01.2025**

This notification specifies that a Unit of IFSC shall not be considered as buyer for the purposes of section 206C(1H) of IT Act, 1961 in respect of purchase of goods from a seller, subject to the following conditions, namely: -

a. the buyer shall –
   (i) furnish a statement-cum-declaration in Form No. 1A to the seller giving details of previous years relevant to the ten consecutive assessment years for which the buyer opts for claiming deduction u/s 80LA(1A) and 80LA(2) of the said Act; and
   (ii) such statement-cum-declaration shall be verified in the manner specified in the said Form, for each previous year relevant to the ten consecutive assessment years;

b. the seller shall –
   (i) not collect tax on payment received from the buyer after the date of receipt of copy of statement-cum declaration; and
   (ii) furnish the particulars of all the payments received from the buyer on which tax has not been collected in pursuance of this notification in the statement of collection of tax referred to in section 206C(3) of the said Act read with rule 31AA of the Income-tax Rules, 1962.

The relaxation shall be available to the buyer only during the said previous years declared by the buyer in the said Form for which deduction u/s 80LA of the said Act is being opted and the seller shall be liable to collect tax on payments received for any other year.

❖ **CBDT Notification No. 8/2025 dated 20.01.2025**

The CG has issued an Order u/s 98(1) of the Finance (No.2) Act, 2024 to address challenges faced by individuals under the Vivad se Vishwas Scheme in specific cases.

This applies when:

- An order was passed on or before July 22, 2024.
- The time for filing an appeal was still open on that date.
- The appeal was filed after this date but within the allowed time frame.
- The appeal is filed without any application for condonation of delay.

Under this Order, such appeals will be treated as pending as of July 22, 2024, for the purposes of the Vivad se Vishwas Scheme. The individual will be considered an appellant, and the disputed tax will be calculated based on the appeal. The Scheme's provisions and rules will apply accordingly.

- **CBDT Notification No. 9/2025 dated 21.01.2025**

  The section 44BBC relates to special provision for computing profits and gains of business of operation of cruise ships in case of non-residents. The notification inserts Rule 6GB, outlining special provisions for applicability of presumptive taxation regime for non-resident cruise ship operators under this section. To qualify, such ships must carry over 200 passengers or be at least 75 meters long, provide leisure and recreational services with dining and cabin facilities, operate on scheduled voyages or excursions touching at least two or the same Indian sea ports twice, primarily transport passengers rather than cargo, and adhere to procedures or guidelines issued by the Ministry of Tourism or Shipping.

- **CBDT Notification No. 10/2025 dated 27.01.2025**

  This notification introduced amendments to the Income-Tax Rules, 1962, focusing on regulations for venture capital funds, finance companies, and retail schemes. These changes, effective from January 27, 2025, are aimed at aligning with provisions u/s 10 and 94B of the IT Act, 1961.

  Key amendments include the addition of Rule 2DAA, specifying that venture capital funds u/s 10(23FB) are to be regulated as Category I Alternative Investment Funds within International Financial Services Centres (IFSCs).

  Rule 21ACA outlines permitted activities for finance companies in IFSCs, such as lending, factoring, and treasury management, with the condition that interest payments to non-residents must be in foreign currency.

  Further, Rule 21AIA introduces conditions for retail schemes and exchange-traded funds (ETFs) u/s 10(4D). Retail schemes must maintain specific diversification limits, while ETFs must be listed on recognized stock exchanges and adhere to IFSC regulations. These amendments ensure clarity in taxation for funds and financial entities operating in IFSCs, fostering compliance and aligning with international standards.

- **CBDT Circular No. 1/2025 dated 21.01.2025**

  The Multilateral Convention to Implement Tax Treaty Related Provisions to Prevent Base Erosion and Profit Shifting ("MLI") entered into force for India on 1st October 2019. A key provision of the MLI is the Principal Purpose Test (PPT), which seeks to curb revenue leakage by preventing treaty abuse. While the PPT is included in most of India's DTAAs through the MLI, it is part of some other DTAAs through bilateral processes. The guidance clarifies that the PPT applies prospectively from the date of the MLI's entry into force (1st October 2019 for India) or bilateral agreements' effective dates. Special provisions apply for certain treaties with grandfathering clauses, including those with Cyprus, Mauritius, and Singapore, which remain unaffected by the PPT. The circular highlights that PPT application requires a case-specific, fact-based assessment and may consider additional resources like the BEPS Action Plan 6 Report and the UN Model Tax Convention.

JUDICIAL UPDATES
INCOME TAX CASES

Whether Reduction in Share Capital and Extinguishment of Rights Constitute Transfer u/s 2(47), Taxable u/s 45

The assessee, a company investing in shares, purchased shares in Asianet News Network Pvt. Ltd. However, due to the company's losses, the value of the assessee's shares was reduced. The assessee claimed a long-term capital loss due to the reduction in share capital, but the AO rejected this claim, arguing that the face value of the shares remained unchanged. The High Court disagreed with the officer's view, ruling in favor of the assessee and affirming the ITAT's decision to allow the capital loss claim.

Section 2(47) of the IT Act, 1961 provides an inclusive definition of *transfer*, which includes the relinquishment of an asset or the extinguishment of any right associated with it. Even though a taxpayer remains a shareholder after the reduction of share capital, the reduction in the face value of preference shares leads to the extinguishment of certain rights, thus reducing the rights attached to the capital asset. This reduction of rights amounts to a *transfer* under the definition provided by Section 2(47).

The reduction in the face value of shares causes a proportionate extinguishment of the preference shareholder's rights, including the right to dividends, share capital, and distribution of net assets upon liquidation. This reduction in rights is considered a *transfer* of the capital asset as per Section 2(47). The Court emphasized that a capital gain can arise not only from the sale of a capital asset but also from the relinquishment or extinguishment of rights in the asset. The profit or gain arising from this *transfer* is subject to tax u/s 45.

Even if the face value of shares remains unchanged before and after the reduction of share capital, the relinquishment of certain rights still qualifies as a *transfer*. The Court reaffirmed that *sale* is just one mode of transfer u/s 2(47), and the relinquishment of rights can also be treated as a transfer. As a result, the reduction of share capital in the subsidiary company, along with the proportional reduction in the principal company's shareholding, is considered a *transfer* within the meaning of "sale, exchange or relinquishment of the asset" u/s 2(47), making any resulting profit or gain taxable u/s 45.

Whether delay in filing audit report is condonable & penalty u/s 271B unwarranted where delay is attributed to genuine difficulties, seizure of important books & documents & where no loss of revenue is noted due to delay

The Appellant challenged the imposition of a penalty u/s 271B of the IT Act, 1961 for the delay in filing the audit report for the AY1986-1987. The Appellant's sister concerns had faced similar delays, but the penalty was not imposed on them after the Tribunal accepted their explanations. The Appellant argued that the delay in its case was due to several raids and seizures, which hindered the timely preparation of the audit report. The Tribunal, however, imposed the penalty, citing the delay as the primary reason.

The Court found that the Appellant's delay was attributable to genuine difficulties, including the seizure of important books and documents. The Court also noted that the Revenue had accepted the Appellant's returns, meaning there was no loss to the Revenue despite the delay. The Court observed that the circumstances and causes shown by the Appellant were not substantially different from those accepted in the case of its sister concerns. Thus, the Court set aside the penalty and allowed the appeal, ruling in favor of the Appellant.

Whether CSR contributions, while not deductible as business expenses u/s 37(1) due to an amendment in the Finance (No. 2) Act, 2014, should still qualify for a deduction u/s 80G, as they are applied from the total income

The assessee appealed against the CIT(A)/NFAC's order for AY 2020-21, which upheld the AO's decision to disallow a deduction of Rs. 2,57,66,663 u/s 80G for CSR expenses. The AO argued that CSR expenses, being mandatory u/s 135 of the Companies Act, 2013, are not voluntary donations and thus do not qualify for 80G deductions. The AO also charged interest u/s 115P and initiated penalty proceedings u/s 270A. The CIT(A) agreed with the AO, citing the Supreme Court's ruling in Ramnath And Co. vs. CIT that exemptions under 80G must be strictly interpreted. The assessee, dissatisfied with the decision, has now approached the Tribunal, arguing the disallowance is incorrect and contrary to legal precedents on 80G deductions.

In the case of M/s Ratna Sagar Pvt. Ltd. vs. ACIT (ITA No. 2556/Del/2023, AY 2018-19), the Tribunal addressed the similar issue involving the disallowance of CSR-related expenses as deductions u/s 80G. The assessee argued that while CSR contributions are not deductible u/s 37(1) due to an amendment in the Finance (No. 2) Act, 2014, they should still qualify for a deduction u/s 80G, as they are considered donations from total income. The Tribunal agreed, distinguishing CSR expenses from mandatory obligations and treating them as philanthropic donations eligible for Section 80G deductions. The Tribunal followed its earlier ruling in M/s Ratna Sagar Pvt. Ltd., and ruled in favor of the assessee, deleting the addition made by the CIT(A) and allowing the appeal.

Whether gains arising by valuation of monetary assets and liabilities of foreign operations as at end of year cannot be treated as real income of assessee

The assessee, involved in the manufacture of pipes and with plants in various locations, including an Export Oriented Unit (EOU) in Mundra and an overseas branch in the USA, faced an issue with the treatment of translation gains. The assessee's financials were affected by the conversion of its US branch's balance sheet and profit/loss account from USD to INR, which resulted in a notional translation gain of Rs 3,32,46,356 during the AY2005-06. This gain was excluded from the taxable income by the assessee, following a consistent practice accepted by the revenue in earlier years. The AO, however, incorrectly assumed the assessee had claimed a translation loss as a deduction and sought to disallow it. The CIT(A) deleted the disallowance, agreeing with the assessee that the translation gain was notional, arising from capital items and not revenue transactions, and thus, had no impact on taxable income. The treatment of translation gains and losses as notional, as per AS 11, was upheld by the CIT(A).

Whether assessee is eligible for depreciation on goodwill arose to assessee on account of scheme of amalgamation

The intangible asset of goodwill arose to the assessee on account of scheme of amalgamation of its wholly owned subsidiary "DCPL Foundaries Ltd." with the assessee company, which scheme was approved by the High Court of Gujarat. The AO however, disallowed the depreciation. The assessee therefore challenged the action of the CIT(A) in confirming disallowance of depreciation of Rs. 1,07,97,284/- claimed u/s. 32 on goodwill generated on amalgamation.

The ITAT, in the case of Urmin Marketing Pvt. Ltd., ruled in favor of the assessee regarding the claim for depreciation on goodwill. The AO had denied the depreciation, citing provisions of the IT Act, 1961 that apply to assets transferred in an amalgamation. However, the ITAT rejected this reasoning, explaining that the goodwill arising from the amalgamation represents the difference between the purchase consideration and the net asset value, not an asset transferred from the amalgamating company. The ITAT held that specific provisions of the IT Act, 1961, including Section 32(1), Section 43(1), and others, do not apply to such goodwill. Therefore, the assessee was entitled to claim depreciation on the goodwill, and the AO was directed to allow the depreciation of Rs. 1,07,97,284

Whether designated authority under DTVSV Act, 2020 cannot reopen assessment after final certificate is issued u/s 5 of DTVSV Act and all disputes with regard to 'tax arrear' stand concluded

The assessee had challenged the reassessment proceedings initiated u/s 147 of the IT Act, 1961, after the Designated Authority had issued a certificate in Form No. 5. The said certificate recorded that a sum of Rs 59,73,812/- had been paid by the declarant towards full and final settlement of the 'tax arrear'.

Once a declarant is issued a certificate (Form No.5) in terms of Section 5 of the DTVSV Act, and the declarant deposits the determined amount, the Designated Authority is proscribed from initiating any action or proceedings in respect of 'tax arrear'. The dispute stands settled. The 'tax arrear' are resolved in terms of Section 3 of the DTVSV Act and any appeal pending with respect to such disputed tax is deemed withdrawn as in terms of Section 4. Section 6 provides immunity from initiation of proceedings in respect of tax arrears which are subject matter of resolution under the DTVSV Act;

A plain reading of the provisions of the DTVSV Act indicates that once a final certificate is issued u/s 5(1) of the Act, all disputes with regard to the 'tax arrear' stand concluded. It is apparent that the issuance of the impugned certificate is without authority of law. The counsel for the Department also conceded that there is no provision under the DTVSV Act that empowers a Designated Authority to reopen a concluded settlement. Thus, a designated authority under the Direct Tax Vivad Se Vishwas Act, 2020 cannot reopen an assessment after a final certificate is issued u/s 5 of DTVSV Act and all disputes with regard to the 'tax arrear' stand concluded.

Whether neither share applicant gets right to receive interest on share application money nor notional interest accrues to it, in absence of allotment of shares

The assessee, engaged in real estate development, earned income from interest on fixed deposits, ICDs, and dividends. During the year, the assessee received Rs. 2,92,26,436/- in dividends. The AO imputed notional interest at 12% on funds provided as share application money to group entities Sea View Developers Ltd. and Shantiniketan Properties, believing this was done to avoid tax on interest. The AO added Rs. 2,34,01,358/- to the assessee's income as notional interest. On appeal, the CIT(A) upheld the AO's decision, stating that the share application money was essentially a disguised loan to avoid provisions of section 2(22)(e), and also referred to the Companies Act, which mandates interest payment if shares are not allotted within 60 days.

The assessee's balance sheet shows sufficient funds of Rs. 184 crore, with only Rs. 27.50 crore invested as share application money, making the revenue's claim of fund diversion to avoid tax unjustified. The revenue did not challenge the fact that no notional interest was charged in the previous year on similar facts. Under the Companies Act, the recipient of share application money is liable to return it with interest if shares are not allotted, but the share applicant is not entitled to interest, and no notional interest accrues. The IT Act, 1961 does not tax notional income. Therefore, the addition of notional interest made by the AO was found to be incorrect and should be deleted.

Whether no tax can be levied on advance amount received by assessee for agreed sale proceeds, when no sale of land was actually executed during year under consideration

The assessee, involved in real estate development, reported an advance of Rs. 546.93 CR in their books for the sale of 47.34 acres of land. The total agreed sale proceeds were Rs. 575 CR, indicating that the assessee had already received 95.11% of the total amount in advance.

A survey was conducted on M/s. Sikkim Ferro Alloys Ltd. and its group companies, which included the assessee as one of the sister concerns. Based on this, the AO treated the advance of Rs. 546.93 CR as total revenue for the AY2014-15, following AS-7 issued by the ICAI. As a result, the AO assessed the total income of the assessee to be Rs. 537.19 CR.

However, on appeal, the CIT-A increased the revenue from Rs. 546.93 CR to the total agreed sale amount of Rs. 575 CR, thereby enhancing the total income assessment to Rs. 564.76 CR.

The assessee argues that AS-9 should apply to the sale of goods, which is relevant to their case. According to AS-9, revenue can only be recognized when the property in the goods is transferred to the buyer, along with the significant risks and rewards of ownership. In this case, neither the transfer of property nor the transfer of risks and rewards had occurred.

The assessee maintains that the land in question was still in their possession and the title deed was with the bank, as the land had been given as security for a loan. This created an encumbrance on the property, meaning the assessee could not sell or transfer the title until the loan was repaid and the security was redeemed.

Therefore, since the sale had not taken place, the revenue's assertion that the land was sold during the year cannot be accepted. As such, the advance received for the land sale should not be treated as taxable revenue, and no tax should be levied on this amount.

NEWS UPDATES

GST collections in January at Rs 1.96 lakh crore, up 12.3% YoY

Digital payments rise 11.1 pc at Sept-end 2024: RBI data

No GST on penal charges levied by banks, NBFCs: CBIC

Net direct tax collection rises 15.88 pc to about Rs 16.90 lac crores for current fiscal year

RBI adds 8 tons gold to its reserves in November 2024: WGC

India still among top four reserves holders despite a steep fall

VALUATION BUZZ

ITC Hotels eyes overseas expansion post-demerger

Florida investor makes counter-offer for Religare Enterprises

Fintechs' personal loan portfolio drops 10 pc in Q2, NPAs inch up: FACE

RBI expresses concerns over small finance banks: Mergers suggested to mitigate risks

OUR TEAM

We are a team of professionals comprising of Chartered Accountants, Company Secretaries, Cost and Management Accountants, Advocates and MBAs who are truly committed in providing timely, professional and quality services to our clients thereby building a long-term relationship with them.

ABOUT THE FIRM

DGA Global is a multi-disciplinary audit and advisory firm providing gamut of services including audit, income tax, consulting and outsourcing services. We are based in the National Capital Region, Gurgaon, India. The firm is headed by Deepanshu Gupta, Chartered Accountant, having 14 years of experience working in Deloitte and PwC. Deepanshu is also a Cost and Management Accountant having secured 1st rank in North India. He has worked extensively for Indian and global clients serving wide-ranging sector experience in Manufacturing, Engineering, Automobile, IT/ITES/BPO, Real Estate, Investment Management, Mining among others for several years. He is also a Registered Valuer in domain of Securities and Financial Assets (SFA).

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