MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

December | 2025

CONTENTS

FOREWORD 3

DIRECT TAXES

INTERNATIONAL TAXATION

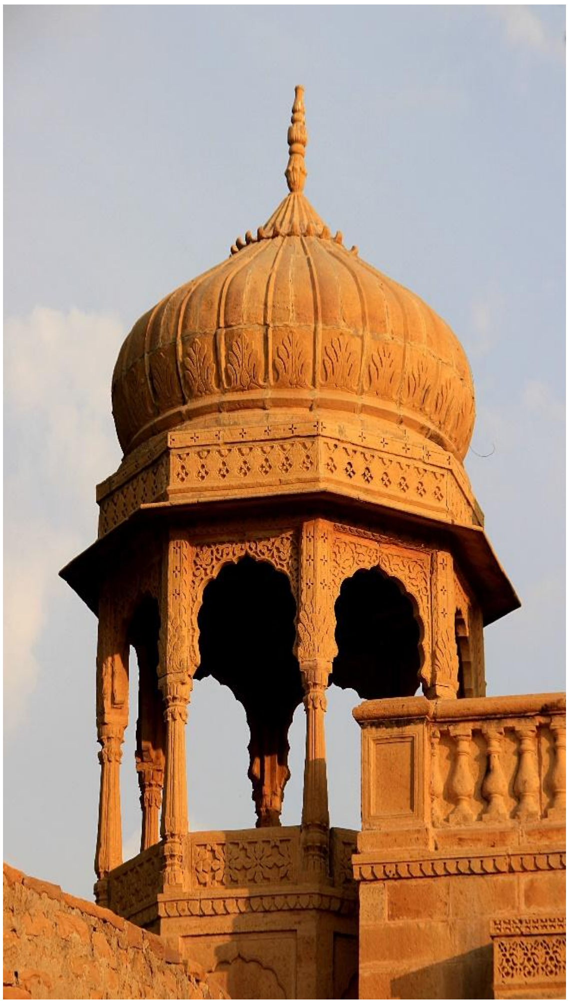
CASE LAWS

- Apex Court (the Supreme Court of India) denies Mauritius tax treaty benefit to Tiger Global in much awaited tax case 4
- The Supreme Court of India (Apex Court) holds that Section 44C (of the Income-tax Act 1961, hereinafter referred to as "the Act") applies even to expenditure exclusively incurred for Indian branch and not restricted to common expenditure 7
- Dividend Distribution Tax, in pith and substance, is a tax on the dividend income of the shareholder, and therefore cannot exceed the tax rate on dividends prescribed under the applicable DTAA in case of a non-resident shareholder 9

DOMESTIC TAXATION

CASE LAWS

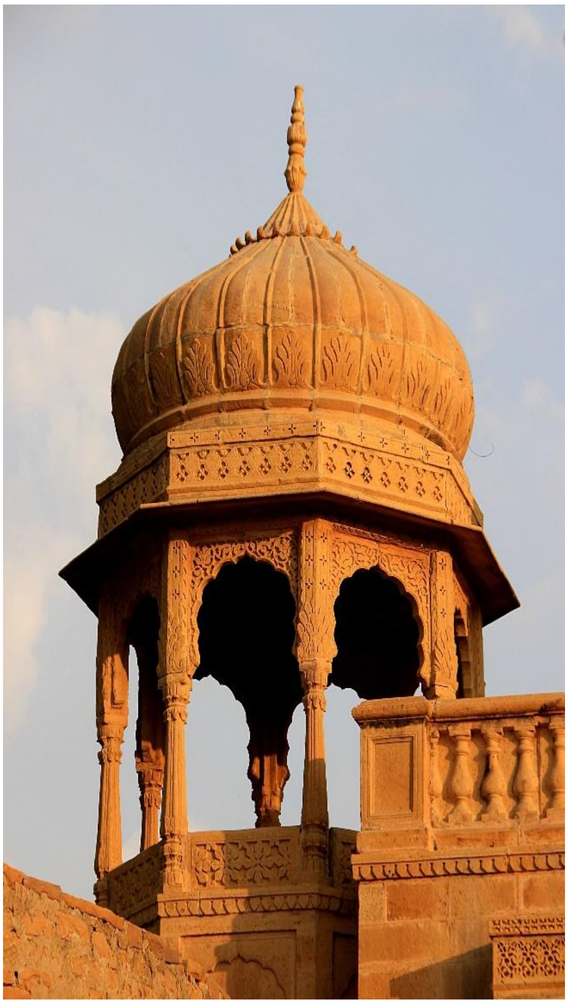
- ITAT Mumbai Bench allows TDS credit not claimed in Income Tax Return but during passing of order giving effect to by the Assessing Officer 11
- Interest on delay in tax refund assumes the character of tax refund, eligible for further interest 13
- Non-compete fee is a revenue expenditure allowable under Section 37(1) 14



MPC & CO LLP
CHARTERED ACCOUNTANTS

REGULATORY

- The Income-Tax (Appellate Tribunal) Amendment Rules, 2025 - Filing of appeal before Income Tax Appellate Tribunal made “digital” 16
- Introduction of e-production Investment Visa (e-B4 Visa), by the Department of Promotion of Industry and Internal Trade (DPIIT) of the Govt. of India 16



FOREWORD

Dear Reader,

This week, India and the European Union (EU) concluded negotiations on a landmark Free Trade Agreement, which will promote Trade, Investment and mobility between India and Europe.

As per the announcement made by the European Commission President Ms. URSULA Von der Leyen, European Council President Mr. Antonio Costa and the Indian Prime Minister Mr. Narendra Modi, this Agreement on coming into force will provide major reliefs in reduction, elimination of Customs Tariffs and removal of Trade Barriers.

The Finance Minister, the Government of India will present India's Budget for the Financial Year 2026-27 on February 1, 2026 which is also expected to rationalize Customs Tariffs in a bigger way besides other policy changes, announcements which may be made.

This Corporate Update includes two major important decisions of the Supreme Court of India, including one affecting the interpretation of treaties between India and other countries, as well as a few other important judgements, report on regulatory changes etc.

C.S. Mathur
Partner

DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

Apex Court (the Supreme Court of India) denies Mauritius tax treaty benefit to Tiger Global in much awaited tax case

The Authority For Advance Rulings (Income-tax and Others) v Tiger Global International II Holdings [2026] 182 taxmann.com 375 (SC)

In what is being regarded as a watershed moment in Indian tax jurisprudence, the Supreme Court has rendered a landmark decision concerning applicability of tax treaty benefits. This landmark judgment touches upon an arena of critical tax concepts such as tax sovereignty, tax residence, indirect transfer, treaty shopping, anti-abuse provisions etc.

Background

The much-awaited decision relates to capital gain exemption under the famed India-Mauritius tax treaty ('tax treaty'). The said tax treaty provided a capital tax neutral exit option to downstream investments into India and thus, was widely popular for both Foreign Institutional Investment as well as Foreign Direct Investment. However, this tax treaty had a checkered history given its rampant misuse by treaty shopping, leading to protracted litigation.

The last decade has witnessed a growing dissent towards base erosion at the global level. India has kept pace with global developments such as BEPS, Multilateral Convention, Two pillar approach etc. In the same direction, the tax treaty itself was amended whereby, the exemption from capital gains tax was withdrawn in respect of investments made on or after April 1, 2017. However, gains from sale of investments made prior to April 1, 2017 were grandfathered and continued to enjoy exemption.

Parallelly, at the domestic front, the legislative framework underwent a series of changes to align the tax law with the broader goal to counter tax abuse. Resultantly, provisions relating to taxation of indirect transfers, prescription of additional documents to supplement tax residency certificate were etc were introduced. More particularly, General Anti Avoidance Rules (GAAR) were introduced which had an overriding effect over tax treaty provisions.

The Supreme Court was dealing with the question of whether capital gains tax exemption under the tax treaty is available in respect of an investment structure which existed even prior to 2017. The Supreme Court, while overturning the decision of the High Court of Delhi, held that the arrangement was prima facie, conceived to avoid tax, when viewed from the prism of both GAAR as well as JAAR (i.e. Judicial anti abuse rules). As such the Court held that the arrangement is not eligible for treaty benefits or for grandfathering from domestic anti abuse provisions. Thus, the Supreme Court held that the sale of shares is liable to tax in India under the Indian domestic tax law.

Brief Facts and decisions of lower forums

Tiger Global International III Holdings, Mauritius as well as certain Mauritian entities (collectively referred to as "assessees") operated as pooling vehicles for investments. Such entities held a Category –

1 Global Business License in Mauritius and had aggregated funds from many investors. These entities acquired the shares of Flipkart, Singapore during the period 2011 to 2015. The shares held by the assessees drew their value from the downstream investments in several Indian companies. Thereafter, in pursuance of a takeover scheme with Walmart, the asseessees sold their stake in Flipkart Singapore to Fit Holdings SARL, Luxembourg in May, 2018.

The assessee approached the Authority for Advance Ruling (AAR) to seek a ruling on whether any incidence of capital gains tax arises on the aforesaid sale in view of Article 13 of the India-Mauritius tax treaty. However, the AAR refused to admit the application at the threshold, as it held that entire arrangement was conceived prima facie, for tax avoidance purposes.

Thereafter, the High Court of Delhi decided the matter in favour of the assessee. The Court dispelled the argument of the revenue that the structure lacked economic substance. The court stated that one cannot presume a tax abuse motive merely on the premise that investments were routed through a special vehicle in a tax friendly jurisdiction. The High Court, upon analyzing Article 13 of the tax treaty, observed that it was the conscious position of the treaty partners not to deny treaty benefits to investments made prior to April 1, 2017. Thus, the High Court held that provisions of General Anti Avoidance Rules (which were effective from April 1, 2017) had no application. Accordingly, the Court held that the sale of shares of the Singaporean entity shall not be liable to tax in India. *[An Article based on the said High Court decision was published in the Corporate Update for September, 2024*]

Supreme Court's Verdict

During the course of arguments before the Apex Court, discussions revolved primarily around the evolution of treaty shopping, anti-abuse provisions as well as earlier landmark decisions of the Supreme Court in *McDowell & Company ltd*, *Azadi Bachao Andolan* and *Vodafone International Holdings BV*. The key observations of the Supreme Court are enunciated hereunder:

- <u>Indirect transfers not protected by tax treaty:</u> The Supreme Court held that transfers of shares of an overseas company deriving value from Indian downstream investments is not protected by the tax treaty. Here, it may be mentioned that Article 13(4) of the tax treaty is a residual clause which grants the state of residence exclusive rights to tax capital gains not covered under sub articles 1, 2, 3 and 3A. This has raised ambiguities as hitherto it was widely accepted that indirect transfers fall within such residual clause and ought to be taxed in the country of residence. This observation has significant ramifications, as tax authorities are likely to deny treaty benefits in case of indirect transfers.

- <u>Sufficiency of TRC and treaty override:</u> Tax Treaty eligibility hinges upon substantiating residence in one of the treaty partner countries. Usually, a valid TRC from the concerned authorities of the resident state would be acceptable proof of residence. In the context of tax havens such as Mauritius, tax authorities have often rejected TRCs of intermediary entities registered in Mauritius, treating them as empty shells created for treaty shopping. In the year 2000, the Government had issued a Circular no 789 (applicable for FIIs etc) to reiterate its stand that such TRC from Mauritian authorities would be sufficient for the purpose of treaty eligibility. This circular was a key element in the landmark decision of *Azadi Bachao Andolan*.

In the present case, the assessees relied on the decision of *Azadi Bachao Andolan* to contend that they were eligible for exemption from capital gains tax. On the other hand, the revenue argued that such circular was issued only in the context of FIIs and not for foreign direct investment. The Apex Court noticed that the law has significantly been amended since the issuance of the aforesaid circular and earlier decisions in *Azadi Bachao* and *Vodafone*. The Apex Court noted that Section 90(4) (which was inserted by the Finance Act, 2012) TRC is only an 'eligibility condition' rather than a 'sufficient' condition. The Court also casted doubts on the TRC produced by the asseessees and held that the same cannot bind tax authorities.

Moreover, the Court also relied heavily upon Section 90(2A) of the Act, (effective from April 1, 2016) which permits treaty override where GAAR is pressed into service. The Court observed that pursuant to the aforesaid provision, mere holding of a TRC cannot prevent inquiry into the genuineness of the arrangement.

- <u>Whether the investment / arrangement was eligible for grandfathering:</u> The provisions of GAAR and rules framed thereunder were effective from April 1, 2017. Rule 10U(1)(d) of the Income-tax Rules, 1962 does grandfather 'investments' made prior to April 1, 2017. However, Rule 10U(2) states that GAAR provisions shall apply to 'arrangements', irrespective of the date when it was entered into, if tax benefit (exceeding INR 30 Million) was obtained on or after April 1, 2017.

  The revenue highlighted the distinction between the expressions' 'investment' and 'arrangement'. It was argued that even if an investment was made prior to the cutoff date (April 1, 2017), the subject structure would be regarded as an 'arrangement' for the purpose of GAAR and therefore ineligible for grandfathering. The Apex Court, finding force in this argument, held that arrangements that are characterized as 'impermissible' shall not be afforded grandfathering protection regardless of when the investments were made.

  In the facts of the case, the Apex Court agreed with the finding of the AAR that the arrangement was prima facie, preordained for tax avoidance. The fact that the assessee was not taxable in Mauritius also weighed heavily for the Court to deny benefits of the tax treaty. As such, the Apex Court held that the assessee wouldn't be entitled to capital gains exemption under the tax treaty.

- <u>Substance over Form:</u> The Supreme Court held that it is permissible for an assessee to plan its transaction to avoid levy of tax, only if it is permissible and within the parameters of the law. However, where an asseessee employs colourable devices, tax authorities are entitled to question the legitimacy of the assessee's claim. The Court also noted that the 'substance over form' principle is deeply ingrained in Indian tax jurisprudence and judicially recognized. Thus, even in the absence of GAAR, JAAR may be invoked to pierce the structure to deny treaty benefits.

In this backdrop, the Supreme Court held that the assessee was not entitled to capital gains exemption under the tax treaty, while reiterating the substance over form principle. It may be mentioned that in deciding the matter, the concept of tax sovereignty weighed heavily in the analysis of the Apex Court. The Court has laid down an extensive exposition of concept of tax sovereignty and its interplay with the international tax ecosystem. The Court opined that it is the inherent sovereign right of a country to tax an income which ought to be retained and not compromised. This decision indicates a shift in judicial perspective of foreign investments, especially, considering the Court's observations regarding supremacy of the country's sovereign right to tax.

Anuj Mathur
Senior Director
Tax Advisory
☏ +91 11 4710 2200

The Supreme Court of India (Apex Court) holds that Section 44C (of the Income-tax Act 1961, hereinafter referred to as "the Act") applies even to expenditure exclusively incurred for Indian branch and not restricted to common expenditure

American Express Bank Limited [TS-1655-SC-2025]

Recently, the Apex Court in the above case, while examining the applicability of Section 44C of the Act to the expenditure exclusively incurred by the head office for its Indian branch, has held that deductibility of head office expenditure is subject to the limitation prescribed under Section 44C, irrespective of whether such expenditure is common in nature or exclusive to the Indian branch.

Section 44C governs the quantum of admissible expenditure in respect of head office expenditure, while computing profits taxable in India in the hands of a non-resident assessee (for instance, profits of an Indian branch/ permanent establishment). The allowable deduction is restricted to the lessor of an amount equal to 5% of the 'adjusted total income', or the amount of head office expenditure '*attributable*' to the business of the assessee in India. As per the Explanation to Section 44C, an expense qualifies as 'head office expenditure' if it is incurred outside India and is in the nature of 'executive and general administration' expense including those specified in clauses (a) to (c) of the Explanation or as may be prescribed under clause (d) of the Explanation. The clauses (a) to (c) include expenses towards rent, insurance, etc. of premises outside India, salary, wages, travelling etc. paid to employees outside India.

On facts, the assessee is a non-resident banking company, claimed certain expenses incurred at the head office which were directly related to its Indian branches. The assessee contended that such expenses were exclusively incurred for the purpose of its Indian branches and therefore, outside the ambit of Section 44C and as such, admissible under the general provisions of the Income tax law. However, the assessing officer took a different view and invoked Section 44C, thereby restricting the deduction to 5% of the adjusted total income under section 37 of the Act.

While the assessee's appeal before the first appellate authority was dismissed, the second appellate authority decided in favour of the assessee by relying upon the Bombay High Court's decision in CIT v. Emirates Commercial Bank Ltd. (2004) 134 Taxman 682 (Bombay) wherein it was held Section

44C applies only to common allocated expenditure and not expenditure exclusively incurred for the Indian branch. The High Court of Bombay, on further appeal by the assessee, also decided the matter in favour of the assessee.

The matter travelled to the Supreme Court, wherein, the question before the Court was whether the scope of Section 44C also extends to expenditure exclusively incurred for an Indian branch. The Supreme Court observed that taxation statutes require strict interpretation. Where the words are plain and unambiguous, the Court is bound to give effect to their plain meaning. Reference to the object and purpose becomes relevant only in those situations where the language is capable of multiple interpretations. The Supreme Court held that under ordinary circumstances, it is impermissible for the Court to add or read words into the statute on the notion that such words would better serve the legislative object or purpose.

The Supreme Court also examined the object of introduction of Section 44C of the Act. The Court noted that the concern revolved around the mischief of claiming excessive expenditure by 'inflating' head office expenditure relating to Indian branches and the difficulty in its verification by the tax office. The Court opined that this merely reinforces the conclusion that Section 44C must be given the plain meaning to remedy the very mischief the legislature sought to address.

The Supreme Court held that on a plain reading of Section 44C, it is clear that the head office expenditure is not limited to cover only common expenditure incurred by the head office for the benefit of various branches, including those in India. The plain language of Section 44C, when viewed against the backdrop of the specific mischief it sought to curtail, is unambiguous. The statutory definition is broad and inclusive, containing no indication that 'exclusive expenditure' does not fall within its purview.

Furthermore, the Supreme Court held that the term 'attributable' does not create a statutory distinction between 'common' and 'exclusive' expenditure. The Supreme Court rejected assessee's contention that there is a conceptual difference between 'attributable' expenditure and 'exclusive' expenditure and held that the expenditure which is incurred exclusively for the business in India is, by its very nature, attributable to the business in India. The Court held that if the Parliament had intended to restrict the scope of Section 44C only to common or shared expenses, it would have employed specific language to that effect.

The Supreme Court noted that the Bombay High Court in Emirates Commercial Bank (supra) provided no basis whatsoever as to how it concluded that the expenditure which is covered by Section 44C is of a common nature. Consequently, it held that the view expressed by the Bombay High Court in Emirates Commercial Bank (supra) regarding the applicability of Section 44C is incorrect and does not declare the position of law correctly.

The Supreme Court thus concluded that Section 44C applies to 'head office expenditure' regardless of whether it is common expenditure or expenditure incurred exclusively for the Indian PEs.

The Supreme Court also dealt with the assessee's ancillary contention that the definition of 'head office expenditure' in the Explanation to Section 44C is inclusive and the expenses listed/ prescribed in clauses (a) to (d) are merely illustrative. The Supreme Court rejected assessee's interpretation and observed that if the Explanation were to be interpreted as broadly inclusive, covering all kinds of executive and general administration expenses without restriction, it would render the words “as may be prescribed” in clause (d) redundant. The Supreme Court thus held that Section 44C covers those executive and general administration expenditure which fall within the specific kind enumerated in clauses (a), (b), or (c), or expressly prescribed under clause (d), whether incurred exclusively or not.

The Hon’ble Supreme Court while laying down the above law in the matter, remanded the matter to the Income-Tax Appellate Tribunal, Mumbai, for the purpose of verifying whether the disputed expenditures satisfy the tests laid down above so as to qualify as “head office expenditure under the Explanation to Section 44C of the Act.

Ritu Theraja
Director
Tax Advisory
☏ +91 11 4710 2200

Dividend Distribution Tax, in pith and substance, is a tax on the dividend income of the shareholder, and therefore cannot exceed the tax rate on dividends prescribed under the applicable DTAA in case of a non-resident shareholder

Colorcon Asia Pvt. Ltd [TS-1623-HC-2025 (BOM)]

Recently, in the above landmark decision, the Bombay High Court has held that although Dividend Distribution Tax (“DDT”) is levied on the domestic company declaring the dividend, it is in substance a tax on the dividend income of the investor and, therefore, can be subjected to the lower or more beneficial rates prescribed for dividend taxation under the applicable DTAA.

The assessee, Colorcon Asia Pvt. Ltd., an Indian company and a subsidiary of a UK-resident parent company, distributed dividends to its UK parent company. During the relevant years, DDT under section 115-O of the (Indian) Income-tax Act, 1961 (“the Act”) was leviable at 20% on the domestic company with respect to the dividend declared. The assessee sought an advance ruling on the tax rate applicable on distribution of dividend from the Board for Advance Rulings (BFAR), contending that DDT is essentially a tax on the dividend income of the shareholder and, therefore, the tax incidence should not exceed 10% being the beneficial tax rate for dividend provided under the India-UK DTAA (“the DTAA”).

The BFAR ruled against the taxpayer holding that DDT paid by the Indian company on dividends distributed to its shareholders is squarely outside the scope of DTAA, as the term “Taxes covered” under Article 2 of the DTAA does not cover DDT.

Aggrieved by the ruling, an appeal was preferred before the Bombay High Court.

<u>Arguments advanced by the assessee</u>

- It was contended by the assessee that although Section 115-O levies DDT on the distributing company, the real incidence of tax is on the shareholder.

- Since dividends are income of the shareholder and DDT is merely a mechanism to collect taxes from the distributing company, the benefit of DTAA cannot be denied merely due to change in the incidence of tax under the domestic law for administrative convenience.

- DDT is levied on the dividend distributed by the company, which is income of the shareholders and being an 'Additional income tax' falls within the ambit of charging section 4 of the Act. Accordingly, the same shall be subject to section 90 of the Act, which is an overriding provision and provide an option to the assessee to opt for beneficial provisions under the DTAA.

- The assessee being resident of one of the contracting states as per Article 4 of the DTAA is entitled to seek relief under the DTAA.

- The assessee relied on the decisions in Giesecke & Devrient Ltd [2020] 120 taxmann.com 338 (Delhi Trib) and DCIT v. Indian Oil Petronas (P) Ltd. [2021] 127 taxmann.com 338 (Kolkata-Trib.).

Arguments advanced by the Revenue

- The Revenue contended that the India–UK DTAA governs taxation of income in the hands of a resident of the other Contracting State. As the UK shareholder is not directly assessed or charged to tax, the treaty provisions relating to dividends are inapplicable.

- Since, DDT is not classified as "Tax" under the DTAA, the DDT is excluded from the scope of taxes covered under the DTAA.

- Relying on the decisions of High Court of Bombay in Godrej & Boyce Manufacturing Co. Ltd. V DCIT and ITAT, Mumbai (Special Bench) in DCIT v. Total Oil India Pvt. Ltd., it was urged that the incidence as well as charge in respect of DDT is only on the domestic company declaring the dividend. DDT could not be considered as a tax on dividend income of the non-resident.

Decision of the Bombay High Court

- Analysing the amendments made to Section 115-O on multiple occasions, memorandum explaining the reasons for such amendments, the High Court held that DDT is not a tax on income of the company declaring the dividends. DDT represents a tax on the dividend income of the shareholders, though the incidence of tax has been shifted from the shareholder to the company paying the dividend.

- The court held that the unilateral change made in the domestic law over the years, changing the incidence of tax, cannot alter or override the beneficial provisions of the DTAA.

- In pith and substance, DDT is a tax on the dividend income of the shareholder, though the incidence of tax has shifted from the shareholder to the company paying the dividend for administrative convenience. Any other interpretation of the provisions will render the section 115-O of the Act unconstitutional.

- Reliance was placed by the High Court on the Supreme Court decision in the case of Union of India vs. Tata Tea and Another [2017] 398 ITR 260 (SC), wherein it was held that when dividend is declared and paid to shareholder of a company, its source is not relevant, as it remains dividend income in the hands of the shareholders.

- The court held that the nature of income is a relevant element to invoke Article 11 and not the person who is subjected to tax. In whose hands the tax is levied, is not relevant for application of Article 11, as DDT is a tax on dividend income of the shareholder.

- The court further held that DDT is therefore squarely covered under Article 11 of the DTAA. The BFAR has erred in holding that the shareholder has to be taxed in India to invoke Article 11.

- The court observed that the decision in Godrej & Boyce (supra) as relied upon by the Revenue was rendered in different context and did not govern the present issue.

- The High Court also held that Section 90(2) of the Act of 1961 allows the Appellant-assessee to apply the lower rate of the tax under the DTAA. Article 11(2) of the DTAA restricts the tax rate of such dividend income to 10%.

- Accordingly, levy of tax on dividend paid / distributed by the Appellant in excess of 10% would squarely be contrary to the provisions of the India – UK DTAA.

In view of the above, it was held by the High Court that DDT collected in excess of 10% as provided by India – UK DTAA is erroneous and contrary to law and retention of excess tax would be contrary to Article 265 of the constitution of India. However, the High Court granted liberty to the revenue to gross up the tax rate in an appropriate manner.

Although Dividend Distribution Tax has been abolished in India and from FY 2020-21 onwards, and dividend income is taxed in the hands of the shareholder, this decision nevertheless settles the long-standing tax disputes regarding the applicability of DTAA tax rates to DDT. Accordingly, this decision will be beneficial to the assessees pertaining to assessment years prior to FY 2020-21.

Purnima Bajaj
Director
Tax Advisory
☏ +91 11 4710 2200

DOMESTIC TAXATION

CASE LAWS

ITAT Mumbai Bench allows TDS credit not claimed in Income Tax Return but during passing of order giving effect to by the Assessing Officer

In a recent case of Daiwa Capital Markets India Private Limited v. ACIT, the ITAT Mumbai Bench has allowed TDS credit to the assessee, which was not claimed in ITR but during passing of order giving effect to the appellate order by the Assessing Officer (AO).

The dispute was whether the AO was justified in denying a TDS credit of Rs.73,24,074 solely due to omission of such claim by the assessee in the original or revised Income Tax Return (ITR), even though the credit was reflected in Form 26AS and the corresponding income had been offered to tax.

The assessee filed its original return on November 22, 2013, claiming a TDS credit of Rs.1,78,80,099 as per Form 26AS. A revised return was filed on March 2, 2015. However, in the interim period, a party named Prime Focus Ltd deducted and deposited TDS of Rs.73,24,074, which the assessee was not aware of. Consequently, the assessee did not claim it in the revised return, although it had already offered the corresponding income of Rs.7.32 Crores to tax. During the assessment proceedings as well, such claim of TDS was not made.

The assessee discovered the unclaimed TDS credit later via an updated Form 26AS while preparing an application for an "Order Giving Effect" (OGE) to the CIT(A) order.

The AO rejected the claim during the OGE proceedings, stating that the amount was not claimed in the ITR. The CIT(A) upheld this denial, citing procedural lapses and time limits under Section 239 and Rule 37BA.

The Assessee took the stand that failure to claim the credit was an inadvertent error, which does not lead to giving up such right. Denying the credit amounts to double taxation and unjust enrichment, violating Article 265 of the Constitution (no tax shall be levied except by authority of law). The Assessee relied on recent case of the High Court of Allahabad in the case of U.P. Rajya Nirman Sahakari Sangh Ltd. vs. UOI (2025) 179 taxmann.com 615 (Allahabad) wherein it was held that procedural lapses shouldn't defeat substantial justice.

Further the Assessee also relied on the judgment of ITAT in the case of Damco India (Pvt.) Ltd. v. CIT (2023) 153 taxmann.com 636 (Mumbai Trib.) and argued that the inadvertence on the part of the assessee to claim the credit for the advance tax while filing its return of income or filing the revised return of income does not absolve the AO from its statutory duty as per section 219 of the Act to grant the credit in the regular assessment, particularly when the said amount is duly reflected in Form 26AS.

The Revenue argued that the claim was not made in the return of income as required by Rule 37BA. The claim was time-barred since it was raised after 9 years without any justified reason of delay, and no condonation of delay was sought under applicable CBDT circulars. The Revenue further argued that the procedural laws must be strictly followed.

The ITAT Mumbai Bench ruled in favour of the Assessee, setting aside the lower authorities' orders. The Tribunal noted that the Revenue did not specifically deny that the TDS was deposited and the corresponding income was offered to tax. The AO and CIT(A) failed to verify these facts, relying solely on procedural grounds.

The Tribunal held that procedural rules (like Rule 37BA) are 'handmaid of justice' and cannot be used to deny substantial justice. Denying credit for tax actually deposited amounts to unjust enrichment by the government, as deduction and deposit of TDS is a form of advance tax. When substantial justice is required to be done, the rule and procedure do not come in the way of upholding the principle of natural justice. Retaining the TDS without giving credit violates Article 265 of the Constitution of India, which mandates that if tax is paid in excess, it must be refunded.

The Tribunal clarified that the assessee made the claim during the "Order Giving Effect" proceedings, which is a continuation/finalization of the assessment. Therefore, the AO was duty-bound to consider it. The Tribunal accordingly directed the AO to grant the TDS credit of Rs.73,24,074 along with interest under Section 244A.

Nikhil Agarwal
Director
Tax Advisory
☏ +91 11 4710 2200

Interest on delay in tax refund assumes the character of tax refund, eligible for further interest

Shree Renuka Sugars Limited [TS-1707-HC-2025(KAR)]

Recently, the High Court of Karnataka, in the case of Shree Renuka Sugars Limited, the petitioner assessee, (hereinafter referred to as the "Petitioner"), by issuance of a writ of *mandamus,* directed the tax authorities to grant interest on the delayed refund of tax as well as interest on such interest for the period of delay.

In the present case, a tax demand was raised against the petitioner pursuant to tax scrutiny proceedings. In order to resolve the dispute, the petitioner opted for settlement under the dispute resolution mechanism provided in the Direct Tax Vivad Se Vishwas Act, 2020 ('DTVSV Act'), a special settlement statute which grant immunity from interest, penalty, and prosecution subject to fulfilment of certain conditions stipulated therein. Thereafter, the Principal Commissioner of Income-tax passed an order for full and final settlement of tax arrears of the petitioner, whereby a tax refund became due to the petitioner. The said order was passed on February 24, 2021.

However, the tax refund so determined by the tax authorities was credited to the account of the petitioner only on January 10, 2024. Despite of significant delay in granting the refund, the tax authorities did not grant any interest for the period of delay. Therefore, the petitioner approached the High Court of Karnataka by way of filing a writ petition, seeking directions to the authorities to pay the applicable interest, along with further interest on such interest.

The High Court of Karnataka noted that there was a delay of 35 months in payment of the tax refund to the petitioner by the tax authorities. The High Court of Karnataka noted the decision of the Supreme Court of India relied upon by the petitioner in the case of *Commissioner of Income-tax v. H.E.G. Limited (2010) 324 ITR 331*, wherein, the Apex Court held that the interest component will partake of the character of the "amount due" and shall become an integral part of tax refund once the said amount becomes due and payable.

The High Court of Karnataka also noted the decision of High Court of Rajasthan in the case of *Dwejesh Acharya v. ITO 2023 SCC Online Raj 5600,* wherein, it was held that for the delayed payment of refund due under the DTVSV Act, the petitioner was entitled to interest on the refund amount for the delay beyond the period of 90 days from the date of on which refund became due.

Based on the above judicial precedent and the facts of the present case, the High Court of Karnataka held that the petition deserves to succeed. Without further delving into the matter, the Court allowed the writ petition and directed the tax authorities to pay the refund due to the petitioner for the period of delay along with interest on the interest for such period.

Prabhjot Singh
Manager
Tax Advisory
☏ +91 11 4710 2200

Non-compete fee is a revenue expenditure allowable under Section 37(1)

Sharp Business System v. CIT [(2025) 181 taxmann.com 657 (SC)]

Recently, the Supreme Court in a batch of appeals has held that non-compete fee is 'revenue' expenditure allowable as a deduction under Section 37(1) of the Income-tax Act, 1961, rejecting the contention of the Revenue that such expenditure is capital in nature.

Section 37(1) provides for the allowability of expenditure which is laid out or expended wholly and exclusively for the purpose of business or profession provided such expenditure is not capital or personal in nature and is not covered under the specific provisions of Sections 30 to 36 of the Income-tax Act, 1961.

The facts in the case of Sharp Business System v. CIT are that the Assessee is a company incorporated in India as a joint venture of Sharp Corporation, Japan and Larsen and Toubro Limited, India (L&T). It is engaged in the business of importing, marketing and selling electronic office products and equipments in India. In Assessment Year (AY) 2001-02, the Assessee paid a sum of INR 30 million to L&T as consideration for not undertaking business of electronic office products in India for period of 7 years. Such sum was considered as a non-compete fee by the Assessee and claimed as a deductible revenue expenditure in the tax return filed for AY 2001-02.

In tax scrutiny proceedings, the Assessing Officer considered such non-compete fee to be 'capital' in nature since it warded off competition of the Assessee for a period of 7 years and resulted in an advantage of enduring nature. Thus, such non-compete fee was not allowed as a deduction. On appeal against the order passed by the Assessing Officer, the Commissioner (Appeals) upheld the disallowance. The Commissioner (Appeals) also rejected the alternative ground of the Assessee to allow depreciation if such expenditure is considered as capital expenditure, observing that the non-compete fee expenditure incurred by the Assessee was not for the purpose of its business as the rationale behind incurring such expenditure remained unproved.

On further appeal, the Delhi Tax Tribunal upheld the order passed by the Commissioner (Appeals). The Tribunal held that non-compete fee is a capital expenditure as it resulted in elimination of the competition for a long duration and supported in building reputation and acquisition of a reasonable market share for the Assessee. Further, the Tribunal held that such non-compete fee did not result in creation of an intangible asset eligible for depreciation under Section 32(1)(ii) of Income-tax Act, 1961.

Thereafter, on further appeal against the order passed by Delhi Tax Tribunal, the Delhi High Court dismissed the appeal filed by the Assessee. The Court held that the non-compete fee is a capital expenditure and did not result in any intangible asset eligible for depreciation. It was further held that for an intangible asset to qualify for depreciation under Section 32(1)(ii), such assets must result in a *right in rem* (i.e., right against entire world) and not a *right in personam* (right only against one party i.e., L&T in the instant case). The payment of non-compete fee was a *right in personam* only against L&T, and therefore, not eligible for depreciation.

Before the Supreme Court, it was argued that non-compete fee did not result in elimination of competition nor in any creation of monopoly. Such payment was only made to run the business more efficiently and profitably.

It was alternatively argued that if such payment is construed as a capital expenditure, depreciation should be allowed under Section 32(1)(ii) of the Income-tax Act, 1961. The Revenue contended that non-compete fee is not a revenue expenditure but a capital expenditure. Further, such capital expenditure, even though leading to accrual of 'intangible asset', is not eligible for depreciation as it is not 'owned' or 'used' by the Assessee due to it being a 'negative' right.

On further appeal before the Supreme Court, the Court reiterating the principles emanating from various judicial decisions pronounced by it, observed as follows:

- The purpose behind making non-compete fee payment is to give head start to the business of the payer or for protecting or enhancing the profitability of the business of the payer. Thus, such payment only seeks to protect or enhance the profitability of the business and results in carrying on the business more efficiently and profitably.

- Non-compete fee does not result in creation of any new asset or accretion to the profit-making apparatus of the payer. The only enduring advantage which results from such fee payment is to restrict a competitor in business, which is not 'capital' in nature.

- The length of time over which enduring benefit or advantage may accrue to the payer is not determinative of the nature of the expenditure. Where such advantage merely results in carrying on the business more efficiently and profitably, leaving the fixed assets untouched, said advantage is 'revenue' in nature.

- Non-compete compensation is paid in anticipation that absence of a competition from the other party may secure a benefit to the party paying the compensation. However, there is no certainty that such benefit would accrue to the payer.

- In the instant case, payment of non-compete fee did not result in acquisition of any new business and there is no addition to the profit-making apparatus of the Assessee. The expenditure was incurred to keep a potential competitor out of the same line of business and did not result in elimination of complete competition for the Assessee. As such, *sans* creation of any monopoly, such expenditure only resulted in operating the business more efficiently and profitably.

Thus, the Supreme Court held that the non-compete fee payment made by the Assessee to L&T is a revenue expenditure and allowable as a deduction under Section 37(1) of the Income-tax Act, 1961.

MPCO's critical Note:

The aforesaid decision of Supreme Court on admissibility of non-compete fee as a deductible revenue expenditure under Section 37(1) of the Income-tax Act, 1961 may put to rest the controversy surrounding such issue which is pending before various litigation forums. However, whilst such decision is quite welcome, it may be worthwhile noting that the Court has distinguished the present case with that of creation of monopoly through payment of non-compete fee.

Ankit Nanda
Deputy Director
Tax Advisory
☏ +91 11 4710 2200

REGULATORY

The Income-Tax (Appellate Tribunal) Amendment Rules, 2025 - Filing of appeal before Income Tax Appellate Tribunal made "digital"

The Income Tax Appellate Tribunal ("ITAT") has issued a notification No. 71 -Ad (AT)/2025 dated December 19, 2025 introducing amendments to the Income Tax (Appellate Tribunal) Rules, making the filing of appeal before the ITAT mandatorily through electronic mode. The important changes introduced by the aforesaid notification are as under:

1. Memorandum of appeal to the ITAT shall be filed through Digital Signature, as against physical filing under the earlier rules.

2. In the event of change in address or e-mail ID or mobile number or telephone number of the parties to the Appeal, a revised Memorandum of Appeal shall be required to be filed along with a covering letter specifying the Appeal number originally assigned or the date of filing of the original appeal.

3. Paper Books are also to be submitted digitally by the parties.
4. Filing of Miscellaneous Application for rectification of mistakes before the ITAT shall also be under digital signature.

5. Stay applications shall also be filed in the above manner.

A few other changes have been notified consequent upon the above changes.

Jatinder Singh
Senior Director
Tax Advisory
☏ +91 11 4710 2200

Introduction of e-production Investment Visa (e-B4 Visa), by the Department of Promotion of Industry and Internal Trade (DPIIT) of the Govt. of India

Earlier, foreign nationals coming for installation and commissioning of equipment required Employment Visa. However, the Govt. of India has instituted under the Business Visa Regime a new e-production Investment Visa (e-B4) Visa) for improving the ease of doing business in India.

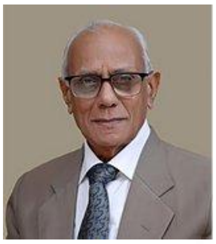
This e-B4 Visa would be issued as an e-Visa and has to be applied for in the online Visa portal.

Further, in order to facilitate the Visa issue process, Indian companies can generate sponsorship letter digitally. To enable this facility, DPIIT has launched the e-production Investment Business registration module on the National Single Window System.

With this module, the Indian companies and Limited Liability Partnerships can instantly generate sponsorship letters for inviting foreign professionals to enable issue of e-B4 Visa.

It could, therefore, be seen that as a measure of ease of doing business in India, the process of issue of e-B4 Visa has been introduced.

Relevant Press Release in this regard has been issued by DPIIT on December 17, 2025. **A copy of this is placed at Annexure to this Note, for ready reference.**



N V Raman
Senior Consultant
☏ +91 11 4710 2200

ANNEXURE TO THE NOTE GIVEN BY Mr N V RAMAN

DPIIT launches a digital sponsorship letter generation module under e-Production Investment Visa (e-B4 Visa)

Module to help Indian companies generate sponsorship letters for inviting foreign professionals in National Single Window System

Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry has launched an online module for Indian companies to generate sponsorship letters for inviting foreign professionals for production related activities under the e-Production Investment Business Visa (e-B-4 Visa) on 29th November, 2025. The launch of this digital platform is a part of a series of reforms that the Government of India has instituted under the business visa regime for improving the ease of doing business in India.

In August 2025, the Ministry of Home Affairs issued a Circular for resolving certain issues related to employment visa, business visa and e-PLI business. As part of this circular, two activities which were earlier covered under the employment visa namely, Foreign nationals coming for installation and commissioning of equipment (i) as part of contract of supply of equipment and (ii) for which Indian companies pay fees or royalty, are now brought under the business visa regime. Further, a new sub-category of "Production Investment Visa" has been created under the Business Visa regime and called the "B-4 Visa" for enabling foreign subject matter specialists/ engineers/ technical people being engaged by Indian companies under the following categories: a) installation and commissioning; (b) quality check and essential maintenance; (c) production; (d) IT and ERP Ramp-up; (e) training; (f) supply chain development for empaneling vendors, (g) plant design and bring-up; and (h) senior management and executives to visit India for such production investment activities seamlessly. Moreover, the existing e-PLI business visa was dispensed with. The Ministry of Home Affairs also made amendments to relevant chapters of the Visa Manual, 2019.

As part of this reform, this Production Investment Visa will be issued as an e-visa and has to be applied for in the online Visa portal. Further, to facilitate the Visa application process for e-B-4 visa, Indian companies shall generate sponsorship letter digitally. For enabling this facilitation digitally, DPIIT had launched the e-Production Investment Business registration module on the National Single Window System (NSWS) on 29th November, 2025, which can be availed by PLI as well as non-PLI businesses.

Processes have been streamlined with simpler forms and recommendation requirement of the Line Ministry has been done away with. With this module, Indian companies and Limited Liability Partnerships (LLPs) can instantly generate sponsorship letters for inviting foreign professionals for production related activities under the e-B-4 Visa category on NSWS (https://www.nsws.gov.in). The Auto population of data and automatic authentication through existing data bases like MCA, GSTN etc. have eliminated the requirement of approval of line ministry. The unique ID of the generated Sponsorship Letter shall be referred by foreign professional when he applies for Visa on the e-Visa portal (https://indianvisaonline.gov.in) where the module has been integrated with NSWS through API.

Disclaimer