# Direct Tax Vista

**Your weekly Direct Tax recap**

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## 1. Changes in the ITR-V and acknowledgement forms on verification of ITR

The CBDT vide Notification dated 27th March 2024 has notified changes in the ITR-V and acknowledgement forms, due to changes made in the Income Tax Act, 1961, as announced in the Budget 2023. Now one needs to be mindful of the submission of ITR-V to avoid penal consequences as taxpayers need to ensure that their ITR-V reaches the income tax department on time. If a taxpayer verifies the income tax return within 30 days of filing it, then the date of submission of the ITR form will be taken as the date of filing ITR. However, if the income tax return form is verified after 30 days, then the date of verifying the ITR will be taken as the date of filing income tax return. The newly notified ITR-V has added two instructions for the taxpayers which are as follows:

- Where ITR data is electronically transmitted and ITR-V is submitted within 30 days of transmission of data- in such cases the date of transmitting the data electronically shall be considered as the date of furnishing the return of income.
- Where ITR data is electronically transmitted but ITR-V is submitted beyond the time limit of 30 days of transmission of data, in such cases the date of ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Income-tax Act, 1961 shall follow.

## 2. Amendment in the Income Tax Act cannot have any effect in interpretation of DTAA... unless the said DTAAs are amended jointly

It is a settled position in law that amendment in the Act cannot have any effect in interpretation of DTAA. A change in executive position cannot bring about a unilateral legislative amendment into a treaty concluded between two sovereign states. Any change made to domestic law to rectify a situation of mistaken interpretation cannot spontaneously further their case in an international treaty. Amendment to Section 9(1)(vi) of Indian Income Tax Act cannot result in a change. It is imperative that such amendment is brought about in the agreement as well, even if it is results in letting some revenue slip by.

Hence it was held by The ITAT in the case of NEW SKIES SATELLITES B.V Vs DCIT, CIRLCE-2(2)(2), INTERNATIONAL TAXATION, NEW DELHI [2024-VIL-400-ITAT-DEL] that the Finance Act, 2012 will not affect Article 12 of the DTAAs. It would follow that the first determinative interpretation given to the word "royalty" in Asia Satellite59, when the definitions were in fact pari materia, will continue to hold the field for the purpose of assessment years preceding the Finance Act, 2012 and in all cases which involve a Double Tax Avoidance Agreement, unless the said DTAAs are amended jointly by both parties to incorporate income from data transmission services as partaking of the nature of royalty, or amend the definition in a manner so that such income automatically becomes royalty.

**3. The onus is entirely on the Revenue to establish existence of PE every year**

The existence or otherwise of PE has to be determined on year to year basis, as the existence of PE has to be decided based on the definition of PE in the relevant tax treaty. Merely because in one year, the assessee had a PE in India, that by itself cannot lead to the conclusion that the assessee must be having a PE in subsequent assessment year, without looking into the relevant facts. In the case of E-Funds IT Solution Inc. (supra), Hon’ble Supreme Court has held that the onus is entirely on the Revenue to establish existence of PE.

The departmental authorities, without dealing with the submissions of the assessee and evidences brought on record through proper reasoning or by bringing any contrary material to controvert them, cannot merely follow their earlier decision

without making any effort to look into the specific facts of the impugned assessment year.

Incase there is a specific averment regarding vacation of office premises in India ; no visit by expatriates in India during the year; it is the duty of the departmental authorities to examine these evidences on merits and thereafter, either to accept them or to reject them with proper reasoning by bringing on record contrary material/evidence.

Even if there is an information received from third party, though such information can form basis for an examination/investigation by the Assessing Officer, but the decision to Act has to be of the Assessing Officer and not of the third party. The Assessing Officer cannot merely do a cut and paste job without independent application of mind or verification or investigation. The departmental authorities cannot merely follow the decision taken by them and higher appellate authorities in past assessment years without independent application of mind to the facts brought on record by the assessee or making proper verification/investigation of the evidences.

In the matter of GE ENERGY PARTS INC Vs ASSISTANT COMMISSIONER OF INCOME TAX, NEW DELHI [2024-VIL-432-ITAT-DEL], the department did not follow the above procedure and the Court did not even consider remitting the matter back to the Assessing Officer to provide him a second inning to improve upon the deficiencies in the original assessment order; and directed the AO to delete the addition.

**4. The powers of inquiry with the AO and CIT(A) are concurrent**

The powers vested with CIT(A) under Section 251 are coterminous with that of AO exercising quasi-judicial functions. The CIT(A) is not only the appellate authority but also possess the power of adjudicating authority similar to that of an AO. The powers of inquiry thus, in a sense, run concurrently. Proper appreciation of all material placed before him is incumbent in law. Even if the AO could not verify evidences for claim of expenses, The CIT(A) ought to make suitable inquiries on the propriety of the expenses claimed in in the light of the documentary evidences in corroboration.

Hence where the AO has made disallowance on adhoc basis without bringing any valid documentary evidence against the assessee, the AO has not conducted any independent inquiry by invoking the provisions of section 133(6) and 131 of the IT Act, the AO has not drawn the basis to arrive at conclusions, adequate materials have not been gathered by the AO to established that it warrants upwards modification of the taxable profit - the addition made by the Assessing Officer maybe considered unwarranted; However, even if the addition made by the Assessing Officer is considered unwarranted, the CIT(A) cannot pass a cryptic and nondescript order and adjudicate in favour of the assessee.

The CIT(A) has to do a detailed verification and pass a detailed order. The ITAT Delhi in the case of ASSISTANT COMMISSIONER OF INCOME TAX, NOIDA Vs GRASS VALLEY INDIA PRIVATE LIMITED [2024-VIL-433-ITAT-DEL] remanded back the matter to the AO where The CIT(A), merely accepted the defenses raised on behalf of the assessee without making any inquiry himself.

**5. Guidelines for AOs for initiating proceedings u/s 147 of I.T. Act, 1961 in e-Verification cases**

The Directorate of Income Tax (Systems) has issued e-Verification Instruction No. 2 (i) of 2024, guiding Assessing Officers (AOs) on initiating proceedings under section 147 of the Income Tax Act, 1961, specifically in e-Verification cases. This instruction pertains to initiating proceedings under section 147 of the Income Tax Act, 1961, in cases related to e-Verification. AOs are mandated to adhere to the guidelines outlined in the instruction, signaling a proactive approach in handling e-Verification cases. Vide e-Verification Instruction No. 2 of 2024 circulated vide F. No.: CIT(eVerification)/2023-24/FVR/Instr./ dated March 01, 2024, it was laid down that certain High-Risk Cases have been identified under e-Verification Scheme-2021 for reopening of assessment u/s 147of the Act and the respective AOs were advised to invoke the provisions of section 147 of the Income Tax Act and issue Notice u/s148 of the Act in such e-Verification cases accordingly. In this regard, the AOs were facing problem in viewing the FVR relating to the cases to ascertain the quantum of Income Escapement amount/ Value at Risk.

Now, the CBDT has laid down that for Non-updated ITR cases, Value at Risk in Final Verification Report (FVR) is the same as Income Escapement amount as estimated by the Prescribed Authorities in the Preliminary Verification Report (PVR). However, in Updated ITR cases, the Value at Risk in FVR is the amount of Income Escapement amount as determined by the Prescribed Authorities in the PVR as reduced by any additional income shown by the assessee in Updated ITR u/s 139(8A)of the Act i.e. (Value at Risk = (Income Escapement amount determined by the PA inthe PVR – Additional income shown by the assessee in Updated ITR)}. Further, the additional income shown by the assessee in Updated ITR u/s 139(8A) of the Act is the amount of Gross Total Income shown in Updated ITR as reduced by Gross Total Income shown in Original ITR i.e. (Additional income = GTI as per Updated ITR – GTI asper original ITR).

**6. RBI relaxes rule for banks on investment in alternative investment funds**

In December 2023, the RBI had restricted banks and NBFCs from investing in AIFs, which have downstream investments in debtor companies. Banks or NBFCs which had investments in AIFs, were given 30 days to liquidate their holdings or make 100% provisions against them. The intent of the policy guidelines was to prevent possible evergreening of loans of the existing debtors of banks through the investment route by using AIF as an intermediary.

Now, on 27th March 2024, The RBI Vide RBI/2023-24/140 circular has given directions to the banks to disclose the extent of their investments in alternative investment funds. Further, the equity investments by AIF in debtor company have been excluded from the scope of the guidelines and other forms of debt/investments which could be used as a means of evergreening have been included. Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of the Circular.

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