

Direct Tax Vista

Your weekly Direct Tax recap

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1. Allowability of Interest on delayed payment of TDS

For claiming an expenditure while determining the taxable income, an assessee should satisfy the twin conditions of allowance of expenditure pursuant to the provisions of Sec.30 to 37 of the Act.

And that the said expenditure is not subject to disallowance under section. 40,43B etc. These need to be complied even for claiming the interest paid on late payment/remittance of TDS. Interest on late payment of TDS is not penal in nature; since it is compensatory in nature, and should be eligible for deduction u/s 37 of Act as it is expended wholly and exclusively for business purpose and payment of interest on late remittance of TDS is neither an offence nor prohibited by Law.

However, a divergent view is that payment of interest takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be but not paid in time, which renders the assessee liable for payment of interest and may be construed as being in the nature of a direct tax and similar to the income-tax payable under the Income Tax Act. Hence, the interest paid under Section 201(1A) of the Act, may be considered as not assuming the character of business expenditure and may not be regarded as a compensatory payment.

While divergent views are possible, yet the matter was held against the taxpayer in the case of INDIA FLYSAFE AVIATION LTD Vs DCIT, CIRCLE-12(1), NEW DELHI [2024-VIL-255-ITAT-DEL]. This matter however seems not settled as of now.

2. Income Tax Online E-Verification Scheme: A chance to explain a transaction and avoid Scrutiny

Taxpayers should be careful in case they receive any SMS or E-Mail from the Income Tax Department. The CBDT has Implemented E-Verification Scheme for Mismatch in

Interest Income, Dividend Income and Income Disclosed/ not disclosed in ITRs to give the taxpayer a chance to explain a transaction being verified before any further action by way of Assessment or Reassessment is undertaken.

Once a communication is received under the e-verification scheme, the taxpayers should update their income returns under section 139(8A) of the Income-tax Act, 1961, by confirming the information provided or stating that the ITR files were reported incorrectly and updating the ITR accordingly.

Incase they do not agree or confirm with the claims made by the Income Tax Department, they need to submit their response accordingly. If a mistake has occurred, the data will be corrected in due course after the source or reporting entity files its corrected statement. This procedure is carried out using an automated information technology-driven procedure. If the source does not support the taxpayer's objection, it will be required to provide additional evidence under the e-Verification Scheme 2021.

Based on the explanation provided by the taxpayer, the e-verification authority will form an opinion and send a communication to the taxpayer or initiate scrutiny. Taxpayers can file updated returns for FY 21-22 & FY22-23 until March 2025 and March 2026 respectively.

Those taxpayers who have already registered on the e-filing website, can navigate to Compliance portal directly after logging into their account. Details of mismatches identified will be available under the "e-Verification" tab.

Taxpayers who are not registered on the e-filing website have to register themselves on the e-filing website to view the mismatch. For registration, the "Register" button on the e-filing website can be clicked and the relevant details can be provided therein. After successful registration, the e-filing account can be logged into and the Compliance portal can be navigated to view the mismatches.

Important to note are as follows –

1. Submit a response against a question by entering remarks in the Response/ Remarks text box
2. Remember to add supporting document (if any) through View/ Add Attachment option and only then Submit
3. Download the Acknowledgement receipt for the submitted response as evidence.
4. If required, updated response can be submitted by clicking 'Add Response' button.
5. Submitted response(s) can be viewed by clicking View History link.
6. Response should be submitted for all of the questions related to that category. Otherwise, the status will show 'Partially Submitted'.

In case the taxpayer has disclosed the interest income in the ITR under the line item 'Others' in the Schedule OS, he need not respond to the mismatch pertaining to the interest income. The said mismatch shall be resolved on its own and will be reflected in the portal as 'Completed'.

The taxpayer should note down the errors made and ensure that going forward in the ITRs such errors are not made which would invite departmental notice.

3. New cards/wallets for payments across various modes of public transport such as metro, buses, rail, waterways, tolls and parking

PPIs are instruments issued by banks/non-banks that facilitate purchase of goods and services, conduct of financial services, enable remittance facilities, etc., against the value stored therein. PPIs can be issued as cards, wallets, and any such form / instrument which can be used to access the PPI and to use the amount therein.

RBI has issued fresh master directions on 'Prepaid Payment Instruments' (PPIs) vide circular dated February 23, 2024, which prescribes, inter alia, the various types of PPIs which banks and non-banks can issue after obtaining necessary approval / authorization from RBI. As per the master directions, banks/non-banks are permitted to issue PPIs. These PPIs can be issued without KYC verification of the holders and can be reloadable in nature.

Now, such PPIs must be enabled for payments across various modes of public transport such as metro, buses, rail, waterways, tolls and parking. These shall be effective from the date they are placed on the RBI website.

4. RBI Implements cabinet decision to Extend the Interest Equalization Scheme for Pre and Post-Shipment Rupee Export Credit Upto June 30, 2024

The Govt. has extended the hugely successful Interest Equalization Scheme for Pre and Post-Shipment Rupee Export Credit Scheme up to June 30, 2024. The Scheme started on April 1, 2015 and was initially valid for 5 years upto 31.3.2020. The Scheme has been continued thereafter, including one year extension during COVID, and with further extensions and fund allocations. Currently the Scheme provides an interest equalisation benefit at the rate of 2% on pre and post shipment Rupee export credit to merchant and manufacturer exporters of 410 identified tariff lines at 4 digit level and 3% to all MSME manufacturer exporters. The Scheme was not fund limited and extended the benefit without any limit to all exporters. The Scheme has now been made fund limited, and benefit to individual exporters has been capped at Rs 10 Cr per annum per IEC (Import Export Code). In addition, the banks that lend to exporters at an average rate of more than Repo + 4% would be debarred under the Scheme.

As India continues its journey towards becoming a global manufacturing hub, initiatives such as the Interest Equalization Scheme play a pivotal role in enhancing the competitiveness of Indian exporters on the international stage. With the scheme now extended, exporters can look forward to sustained support from the government as they navigate the complexities of global trade.

5. Information on financial information on Government Securities held by retail investors to be shared

Data Sharing between various agencies and networks is and will be the Governance Model as India transcends its journey upstream in the Global economy. In this regard, an Account Aggregator (AA), is a RBI regulated NBFC that facilitates retrieval or collection of financial information, pertaining to a customer, from Financial

Information Providers (“FIP”) on the basis of explicit consent of the customer. The financial information shared through the Account Aggregator is not stored by the AA and it shall not be the property of the AA. This information is not to be used in any other manner except for the purpose of providing it to the customer or consented Financial Information User (FIU).

The Master Direction – Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016, defined the term ‘Financial Information Provider’ (FIP) in paragraph 3(1)(xi). The FIP plays a pivotal role within the Account Aggregator ecosystem, facilitating the secure exchange of financial data.

The RBI Retail Direct Scheme was launched on Nov 12, 2021 to facilitate retail investors to invest in Government Securities. The Scheme enables individuals to open Retail Direct Gilt Accounts with the Bank and access the Government Securities market. Now, to enable aggregation of financial information on Government Securities held by retail investors in their Retail Direct Gilt accounts under the Scheme, RBI includes 'Clearing Corporation of India Limited' as a Financial Information Provider. Earlier in November 2022, the RBI notified that GSTN will be a Financial Information Provider (FIP).

6. Jewellery seizure and addition under Income Tax: Validity and Limits

There is no limit on holding of gold jewellery or ornaments by anybody provided it is acquired from explained sources of income including inheritance. Legitimate holding of jewellery up to any extent is fully protected. Further, w.r.t. seizure of jewellery during Search and seizure, CBDT Instruction 1994 dated 11-05-1994 prescribes the following additional guidelines for strict compliance -

- (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need to be seized.
- (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady 250 gms per unmarried lady and 100 gms. per male member of the family, need not be seized.

(iii) The authorized officer may have regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorising the search all the time of furnishing the search report.

(iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.

Now, if the Assessee explains the source of the entire gold jewellery belonging to assessee being ancestral, parental and received on several occasions and some old jewellery being converted into new one on occasion of some family functions by paying making charges; Genuineness of vouchers/bills of making charges of converted new jewellery claimed by assessee is not disproved by causing enquiry/verification by AO/CIT(A), then there cannot be any demand on the same as held in the case of ASHOK JAIN Vs DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1, UDAIPUR [2024-VIL-282-ITAT-JDP].

While there are divergent divergent opinions on this issue, the one which is favorable to the assessee has to be followed and it gets support from the principle laid down by the Hon'ble Apex Court in the cases of CIT Vs. Vegetable Products (SC) 88 ITR 192; CIT Strawboard Manufacturing Ltd. (SC) 177 ITR 431 and CIT vs. A.J. Abraham Anthrapar (2004) 268 ITR 417. Incase of jewellery found during search and seizure.

7. For the fault of the AO, the assessee shall have to suffer through a new scrutiny u/s 263

For the fault of the AO, the assessee shall have to suffer through a new scrutiny u/s 263 is what The Mumbai ITAT held in the case of PLAY GAMES24X7 PVT LTD Vs DY. COMMISSIONER OF INCOME TAX, CIRCLE-15(1)(1), MUMBAI [2024-VIL-284-ITAT-MUM].

The mere fact that the Assessing Officer does not make any reference to certain issues in the assessment order cannot make the order erroneous when the issues

were indeed looked into and the entire details filed. However as held by The ITAT, where from the Assessment Order it cannot be inferred that the AO satisfied himself with the assessee's replies furnished Section 263 of the Income Tax Act can be invoked.

This order opens up a new angle and may be challenged in the higher forums.

8. AO cannot judge whether the services and expenses are required or not

Services are intangible and the quantum and value is based solely upon the judgement of the recipient. Where an assessee gives the details of persons to whom consultancy charges were paid, with complete address of the recipient parties and details of mode of payment being made through banking channel; the AO had verifies by way of issuing notices u/s 133(6) directly to them and the consultants also confirm the services rendered and the payment being received towards their consultancy services, the AO cannot be to judge whether the services of these persons are required or not without establishing contrary by way of supporting evidences on record to disprove the claim of the assessee.

Similarly, business promotion expenses, salary payment, vehicle expense, membership fees, etc, where vouchers were submitted, have been incurred through bank, and are fully verifiable, cannot be denied in the absence of concrete finding as was held in the case of SHRI DINESH KANHAYALAL DOSHI CHOHTAN Vs DCIT BARMER [2024-VIL-285-ITAT-JDP].

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