



**Luthra and Luthra**  
LAW OFFICES INDIA

**DIRECT TAX UPDATES**

NEWSLETTER

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We extend our best wishes to the recipients of this newsletter.

In this Edition of the Luthra and Luthra Law Offices India – ‘Direct Tax Updates’ Newsletter, we cover some of the pertinent developments in the Direct Tax law space over the last month.

## I. INCOME TAX

### Supreme Court

#### **a. Commissioner of Income Tax v. M/s Jindal Steel & Power Limited, decided on December 6, 2023.**

The Supreme Court has recently held that to compute deduction under Section 80-IA of the Income Tax Act, 1961(‘**the Act**’), the rate at which the State Electricity Board supplies power to the consumers has to be taken as the market value of electricity. The Court interpreted the expression “market value”, for the purpose of Section 80-IA of the Act, to mean, the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction takes place in the normal course of trading. Such pricing is unfettered by any control or regulation; rather, it is determined by the economics of demand and supply.

#### **b. Commissioner of Income Tax, (IT)-2 v. ZTE Corporation, decided on December 6, 2023.**

The Supreme Court dismissed a review petition against its order dismissing SLP

against an order of the High Court (‘**HC**’). The HC, dealing with the case concerning an Assessee-company, based in China that was engaged in supplying telecom equipment like mobile handsets, to various customers in India, *inter alia*, held that where the assessee was a non-resident company, the entire tax was to be deducted at source on payments made by the payer to it and thus, it would not be permissible for revenue to charge any interest under Section 234B of the Act for failure to pay advance tax by the assessee. The HC further held that the supply of software was embedded in supply of telecom equipment resulting in sale of copyrighted article, said transaction was to be treated in nature of supply of articles or goods and thus, payment made towards supply of software was not taxable in India as royalty.

#### **c. Commissioner of Income Tax v. Transocean Offshore International Ventures Ltd., decided on November 28, 2023.**

The Supreme Court dismissed an SLP against the decision of the HC wherein the court had, *inter alia*, held that reimbursement of service tax should not be included in the aggregate of amounts specified in clauses (a) and (b) of Section 44BB(2) of the Act because it does not qualify as an amount received by the assessee on account of services provided by them in prospecting, extraction or production of mineral oils.

## High Courts

### **a. Godaddy.Com LLC v. Assistant Commissioner of Income-tax, decided by the Delhi High Court on December 11, 2023.**

The Court dealing with the case of the Assessee, which was a US-based company which provided services such as domain name registration, website design and web hosting and shared a portion of the fee it received from its Customers with ICANN and registry, *inter alia*, held that since the Company was only acting as a Registrar and offering its services to customers for having their domain names registered and had not granted rights in or transferred right to use its domain name to a third person therefore, the fee that it received was not royalty.

### **b. PCIT v. Oxygen Business Park Pvt. Ltd, decided by the Delhi High Court on December 8, 2023.**

The Delhi High Court quashed proceedings under Section 153A of the Act as there was no incriminating material found during the search. The Court, *inter alia*, held that where no assessment proceedings are pending on the date of the initiation of the search, the assessing officer may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source.

### **c. PCIT v. Inductis India (P.) Ltd., decided by the Delhi High Court on December 4, 2023.**

The High Court of Delhi, dealing with an assessee which was engaged in providing IT-enabled back-office research and data analytics services to its associated establishments, *inter alia*, held that in a case where the assessee-company was a debt-free company any question of receiving any interest on receivables would not arise and therefore, adjustment made on account of interest on outstanding receivables was liable to be deleted.

### **d. Pepsico India Holdings Private Limited v. Assessment Unit Income Tax Department National Faceless Assessment Centre, decided by the Delhi High Court on December 1, 2023.**

The Delhi High Court recently set aside a final assessment order that had been passed without waiting for the directions issued by the Dispute Resolution Panel ('DRP') as mandated by Section 144C of the Act observing that once the objections are filed by the assessee against a draft assessment order within the provided time limit, the rest of the procedure should be followed as prescribed, and the final assessment order ought to be passed by the Assessing Officer in accordance with the directions issued by the DRP.

**e. Serum Institute of India Private Limited v. Union of India, decided by the Bombay High Court on December 4, 2023.**

The Bombay HC dismissed the petition against a 2016 amendment to Section 2(24) of the Act that deals with the definition of 'income'. The said amendment was introduced by the Finance Act, 2015 and inserted sub-clause (xviii) to the said section and led to the classification of subsidies, grants, waivers, concessions, reimbursements by the Centre or states, or incentives in cash or kind, as 'income'.

**f. T.V. Patel Pvt. Ltd. v. Dy. Commissioner of Income Tax decided by the Bombay High Court on December 6, 2023**

The Bombay High Court, *inter alia*, held that an amount that has not accrued to the assessee and has not been received by the assessee cannot be taxed on the mere assumption and presumption that in the future, the small Causes court will order the said sum in favour of the appellant or assessee. It is further that only when the Court passes a final decree one can say that the right to receive the sum has accrued to the appellant. Till then, the right to receive any sum by the appellant is uncertain.

**g. CIT v. Augustus Capital Pte. Ltd., decided by the Delhi High Court on November 30, 2023.**

The Delhi High Court, dealing with the case of a Singapore-based company, *inter alia*, held that explanations 6 and 7 to Section 9(1)(i) of the Act were to be

treated retrospectively as they have to be read along with Explanation 5 which concededly operates from 1-4-1962.

**h. CIT v. Cairnhill Cipef Ltd., decided by the Delhi High Court on November 7, 2023.**

The High Court of Delhi dismissed the department's appeal and, *inter alia*, held that a revisionary order under Section 263 of the Act cannot be passed against a non-existing seller entity by invoking Section 163 of the Act against the buyer.

**i. WAFX Global Pay Ltd v. Assistant Commissioner of Income Tax Circle, decided by the Bombay High Court on December 13, 2023**

The High Court quashed order passed under Section 148A(d) of the Act and the notices issued under Section 148 of the Act as they were barred by limitation and, *inter alia*, held that approval under Section 151 of the Act cannot be granted mechanically or without any application of mind.

## II. NEW ORDERS AND NOTIFICATIONS

**a. Notification No. 102/2023, dated 05-12-2023.**

The Central Board of Direct Taxes ('CBDT') has notified 'Godavari River Management Board' for the purposes of clause (46) of Section 10 of the Act concerning Grants/Subsidies received from the Central Government;

Grants/Subsidies received from the State Governments of Andhra Pradesh and Telangana; and Interest from bank deposits, including savings accounts. The exemption will apply retrospectively for assessment years 2020-2021 to 2023-2024.

**b. Notification S.O. 5045(E)  
[NO.101/2023/F. NO.  
300196/34/2022-ITA-I], dated  
24-11-2023.**

The CBDT has notified 'Chhattisgarh Rajya Beej Pramanikaran Sanstha' & 'Maharashtra Council of Homoeopathy' for the purposes of clause (46) of Section 10 of the Act.

**c. Order F.NO.225/132/2023/ITA-II, dated 1-12-2023.**

CBDT noting the pending grievances of taxpayers related to the concerns of refund for Assessment Years ('AYs') 2020-21, 2019-20, and 2018-19, decided to allow the processing of electronically filed ITRs with refund claims for the abovementioned AYs beyond the specified time-frame in Section 143(1) of the Act, subject to administrative approval, excluding specific exceptions. The intimation of processing under Section 143(1) of the Act can be sent to the assessee concerned by 31.01.2024.

### III. NEW LEGISLATION

**a. Karnataka Motor Vehicle Taxation (Second Amendment) Bill, 2023.**

The Karnataka government tabled the Karnataka Motor Vehicle Taxation (Second Amendment) Bill, 2023, in the assembly, which will repeal the decision to collect lifetime tax on certain categories of goods and passenger vehicles that have already been registered.

Transport minister of the State is [reported](#) to have remarked that the vehicle owners would now have to pay tax once in three months from January 2024 as they used to do earlier but new vehicle owners will have to pay lifetime tax at the time of registration.

### IV. INTERNATIONAL TAXATION

#### **Advance Pricing Agreement**

**a. CBDT releases Advance Pricing Agreement Programme report for AY 2022-23**

The CBDT recently released its yearly [report](#) on the Advance Pricing Agreements Programme ('APA') Report for the year 2022-23. The APA programme in India was launched in 2012, vide the Finance Act, 2012 through the insertion of sections 92CC and 92CD in the Act, to provide certainty to taxpayers in respect of the pricing of cross-border transactions undertaken by taxpayers with their group entities.

According to the latest report, the board recorded the highest-ever APA signings in any financial year since the launch of the APA programme, signing a total of 95 APAs.

## **Mutual Agreement Procedure**

### **a. Guidelines for Mutual Agreement Procedure**

Mutual Agreement Procedure ('MAP') is an alternate dispute resolution mechanism which is available to the taxpayer for the resolution of international tax disputes where the actions of one or both of the contracting states' tax administrations result or will result in taxation contrary to the tax treaty. A resolution once accepted eliminates double taxation, and the need for protracted litigation. On 10 June 2022, the CBDT issued detailed updated guidance on MAP, supplementing the previous guidance with 'Part E', which highlights the responsibility of a MAP applicant to make full and truthful disclosures in item (k) of the existing Form 34F under Rule 44G of the Income-tax Rules, 1962, as such disclosures can materially affect the negotiation process.

## **International Financial Services Centre ('IFSC')**

### **a. Gujarat International Financial Tech-City's ('GIFT') Attractive Tax framework.**

GIFT, India's first International Financial Services Centre established in 2015 in Gujarat recently saw a slew of beneficial announcements made in the Budget 2023. The Budget has now delegated the registration/approval power relating to GIFT to the International Financial Services Centres Authority, and this single-window registration

system will simplify the approval process and boost the ease of doing business. FSC units are, now, eligible for a 100 per cent tax exemption for 10 out of the 15 years and they have the flexibility to select any 10 out of the 15-year block period.

## **Carbon Tax**

### **a. Commonwealth Carbon Tax Model Law**

According to [reports](#), the Commonwealth Secretary-General, the Rt Hon Patricia Scotland KC launched a new tax model at a high-level event on 6 December 2023 in Dubai, the United Arab Emirates, during the United Nations Climate Change Conference ('**COP28**').

Guided by the 'polluter-pay principle', the law is expected to help countries implement a carbon tax to reduce greenhouse gas emissions and achieve the Paris Agreement's goal of limiting global heating to 1.5°C by ensuring an easily administrable carbon tax, with the tax being levied on fossil fuels companies and industrial emitters.

### **b. EU's CBAM to hurt trade.**

According to a [report](#) by the Global Trade Research Initiative ('**GTRI**'), the decision of the European Union (EU) to impose a carbon tax on certain sectors like metals from 2026 will only hurt global trade and not help in containing carbon emissions.

## Others

### **a. Japan's Tax Break for a Decade.**

According to [reports](#), the Japanese government is planning to offer tax incentives for a decade to boost mass production in five (5) areas including Electric Vehicle ('EV') production and semiconductor devices manufacturing.

### **b. UAE's Amendments to corporate tax law.**

The UAE made amendments to certain provisions of the Federal Law on Taxation of Corporations and Businesses with an aim to streamline the implementation of domestic minimum taxes.

### **c. Tax: Japan's Word for the Year.**

Japan has chosen the kanji character for "tax" its word of the year, in a reflection of growing public anxiety over the cost of living and impending tax rises.



*This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or Direct Tax in general), please feel free to contact Rubal Bansal, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.*

The Team:-



**RUBAL BANSAL**

Partner

Email: - [rbansal@luthra.com](mailto:rbansal@luthra.com)



**PRAKHAR PANDEY**



**VISHWAJEET RAO**