Tax Matters

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The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during May 2025:

Income tax rulings

- **Multi-Floor Ownership Qualifies as 'One Residential House' for section 54F Deduction**

  - The Principal Commissioner of Income-tax vs Lata Goel[1]

The taxpayer had filed the Return of Income ('ROI') for FY 2010-11. During the year, the taxpayer had sold shares of FIITJEE Ltd and earned Long Term Capital Gains ('LTCG'). The said gains were invested in acquiring a new residential house at E-27, Vasant Vihar, New Delhi, within the stipulated time and the taxpayer claimed a deduction under section 54F of the Income-tax Act, 1961 ('the Act'). The amount of sale consideration was deposited in the Capital Gains Account Scheme ('CGAS') in two tranches.

Two separate proceedings were initiated in the case of the taxpayer: 1) Search proceedings and 2) Re-assessment proceedings. Accordingly, two separate assessment orders were passed by the Tax Officer under the respective proceedings. The taxpayer filed appeals with the Commissioner of Income-tax Appeals [CIT(A)] for the respective assessment orders. Aggrieved by the orders passed by the CIT(A), separate appeals were filed with the Tribunal, mainly on the following grounds:

i. Appeal by taxpayer:
   a. Deduction under section 54F of the Act is fully disallowed despite holding one residential unit on the date of transfer;
   b. Time barring of the reassessment proceedings; and

ii. Appeal by Revenue - Deduction under section 54F of the Act is fully allowed even though the deposit in CGAS, second tranche, was done out of the borrowed funds and not directly from the amount received from the sale of shares.

The Tribunal consolidated both the appeals and issued a common order[2]. As regards the time barring of the reassessment, the Tribunal observed that the notice for initiating the reassessment proceeding was issued beyond four years. The taxpayer had disclosed all material facts during the original search assessment proceedings. Further, information

[1] TS-572-HC-2025(DEL)
[2] ITA No. 3426/Del/2019 & ITA No. 5892/Del/2015

available in the public domain cannot be considered fresh, tangible material for reassessment. Thus, the reopening of the assessment was deemed bad in law.

As regards the taxpayer owning more than one house property, the Tribunal observed that the Tax Officer had treated the basement as a separate residential house and denied the exemption claim under section 54F of the Act. The Tribunal ruled that the basement, along with the ground, first, and second floors, is a single property, owned by multiple individuals. As per the building bye laws of Delhi Development Authority ('DDA') 1983, the basement is not to be used for residential purposes and can be used for storage or office or commercial purposes, provided it is air-conditioned. The Tribunal also noted no rental income from the basement in previous years. Accordingly, the Tribunal concluded that the basement was not allowed to be used and was not actually used for residential purposes and so cannot be considered as a separate residential property.

As regards the partial allowance of deduction under section 54F, the Tax Officer contended that the taxpayer did not use the sale proceeds from shares of FIITJEE Ltd entirely for re-investment in the residential property. The taxpayer had used part of the sale proceeds to make some donations to a trust and had invested in CGAS through a loan. The Tax Officer concluded the loan transaction to be not genuine. The Tribunal stated that section 54F does not mandate that the sale proceeds of the asset be directly used for reinvestment in another residential house property. The taxpayer can use these proceeds for any purpose, and the new property can be purchased one year before the original asset transfer as per section 54 of the Act. Therefore, the objection was dismissed.

Aggrieved by the Tribunal order, the Revenue filed an appeal with the Delhi High Court ('HC') only on the ground that complete deduction under section 54F was allowed to the taxpayer despite owning more than one house property. The HC observed that separate floors of the singular house were purchased by the family members of the taxpayer. The mere fact that parts of the house were separately owned would not detract from the fact that the entire house was 'one residential house'. The HC placed reliance on various judicial pronouncements, including the decision of the coordinate bench in the case of CIT v. Gita Duggal[3] to support its conclusion. In Gita Duggal (supra) case, the HC held that section 54/54F of the Act uses the expression "a residential house," not "a residential unit." So long as the taxpayer acquires a building for residential use, even if constructed to consist of several units that can be conveniently and independently used as independent residences, the requirement of section 54F should be satisfied. The residential house consists of multiple units are not considered a hindrance to deduction under section 54/54F and is not explicitly or implicitly prohibited. Thus, in the current case, the HC upheld the order of the Tribunal allowing the deduction to the taxpayer under section 54F of the Act.

JMP Insights - *This ruling provides clarity on the interpretation of "one residential house" under section 54F of the Act. The decision also reinforces that proper disclosure of facts by the taxpayer negates grounds for reassessment.*

[3] 2013 SCC OnLine Del 752

- **Receipts for providing Cloud Computing Services Not Taxable as Royalty/Fees for Technical Services**

  - CIT International Taxation vs Amazon Web Services, Inc.[4]

The taxpayer, a non-resident company incorporated in the United States. It is engaged in the business of providing cloud computing services/Amazon Web Services ('AWS') to its customers around the globe. The taxpayer provides standardised and automated cloud computing services to its customers remotely, flexibly and on an on-demand basis. The said services were provided by the taxpayer to multiple users remotely, without any intermingling of data. Further, the taxpayer also provides web services for computing infrastructure to customers, which are quick, flexible, low-cost and on-demand cloud computing services according to the customer's specific needs. During FY 2013-14 and FY 2015-16, the taxpayer had received certain amounts from Indian entities for providing standard cloud computing services. As per the taxpayer, such income was not chargeable to tax either as Royalties or Fees for Technical Services ('FTS'). Also, the taxpayer's customers did not withhold any tax under section 195 of the Act. Therefore, the taxpayer did not file its ROI for both the FYs.

The Tax Officer initiated re-assessment proceedings against the taxpayer for FY 2013-14 and FY 2015-16 based on TDS proceedings carried out in the case of M/s Snapdeal Private Limited, which had availed the services of the taxpayer. The Tax Officer was of the view that the amount received by the taxpayer was chargeable to tax in the respective FYs. The Tax Officer scrutinized the standard agreement between taxpayer and its Indian customers and concluded that the taxpayer was providing a host of services/intellectual property, service offerings like AWS Content, AWS Marks, AWS Site, trademark services and Application Program Interface ('API') to customers to develop further/use existing content for its business. It was further observed that taxpayer provided technical support and made technology available to customers.

Based on the above findings, the Tax Officer held that the income received by the taxpayer were in the nature of right to use scientific equipment and therefore, is taxable as Royalty under section 9(1)(vi) of the Act as well as under Article 12(3) of India-USA DTAA. Further, the Tax Officer held that the support services would be taxable as FTS as the taxpayer was making available technology to the customers. Thus, the fees received are taxable as FTS under Section 9(1)(vii) of the Act as well as under Article 12(4) of India-USA DTAA.

The taxpayer filed an appeal with the Tribunal. The Tribunal examined various clauses of the agreement and the scope of services. Basis the examination, the Tribunal held that the taxpayer's customers were granted only a non-exclusive and non-transferable license to access the standard automated services offered by the taxpayer. No source code of the licensed software was provided to the customers. Further, there was no transfer of technology, skill, technical know-how or process or any right to commercially exploit the taxpayer's Intellectual Property Rights ('IPR'). Accordingly, the Tribunal concluded that the amount paid for the taxpayer's cloud computing services do not constitute Royalty. Further, held that the incidental payments cannot be considered as ancillary or subsidiary to the

[4] ITA 150/2025 & CM APPL. 29405/2025 and ITA 154/2025 & CM APPL. 29646/2025

enjoyment of any right for which Royalties are payable within the scope of Article 12(3) or 12(4) of the India-USA DTAA.

Aggrieved by the Tribunal order, the Revenue filed an appeal with the HC. The HC referred to the agreement and observed that the customers can access and use the cloud computing service, but they do not acquire any right or title or any IPR that would entitle them to exploit or commercially monetize the said assets on their own. The customers do not control the cloud computing hardware or software. The taxpayer has developed an infrastructure that allows customers to develop their own content by accessing the hardware and software. The AWS content is made available to the customers by the taxpayer only in connection with its services or on the AWS site to allow access to the servers.

The HC placed reliance on various judicial pronouncements, including a decision in the case of Engineering Analysis Centre of Excellence Private Limited v. CIT & Anr[5] and a decision of the CIT International Taxation v. Urban Ladder Home Decor Solutions (P.) Ltd[6]. Relying on the various rulings, the HC held that payments received by the taxpayer for providing cloud computing services would not be taxable as equipment Royalty since, customers do not acquire any right of using the infrastructure and software of the taxpayer for the purposes of commercial exploitation. Therefore, the consideration for the cloud computing services cannot be considered as Royalty under the Act or India-USA DTAA. Further, held that the support services do not make available technology or technical skills, know-how or other process to its customers. Hence, it cannot be considered as FTS under Article 12(4) of India-USA DTAA.

JMP Insights - *This ruling provides clarity on the taxability of cloud computing services in India, particularly under the India-USA DTAA. The emphasis on the absence of transfer of technology, skill, or commercial exploitation of rights aligns with the 'make available' clause interpretation. This judgment is a welcome development for companies providing cloud computing services, as it reduces uncertainty regarding their tax obligations in India.*

- **Receipts from domain name registration and web services not taxable as Royalty or Fees for Technical Services under India-USA DTAA**

  - GoDaddy.com LLC vs The Assistant Commissioner of Income-tax[7]

The taxpayer is a limited liability company and one of the world's largest Internet Corporation for Assigned Names and Numbers ('ICANN'). They provide various web services to their customers worldwide, including domain name registration and transfer, web hosting, web designing, sale of on-demand products, and SSL certification services. During FY 2021-22, the taxpayer earned income from domain name registration and from non-domain services (web hosting, web designing, SSL certification, etc.). The taxpayer filed its ROI claiming the

[5] (2021) 432 ITR 471 (SC)
[6] (2025) 171 taxmann.com 549 (Karnataka HC)
[7] TS-546- ITAT-2025(DEL)

above receipts as not taxable in India as Royalty or FTS under the Act or under the India-USA DTAA.

The case was selected for assessment. The Tax Officer held that the taxpayer is a corporation as per USA tax laws and since it is a fiscally transparent entity, it cannot be regarded as a 'resident' as per Article 4(1) of the India-USA DTAA. Hence, it is not entitled to DTAA benefits. The Tax Officer held that the receipts from domain name registration were for granting the right to use the taxpayer's servers. Further, it is a highly technical process and a precondition for other services. Accordingly, the said receipts are taxable as royalty under section 9(1)(vi) of the Act and Article 12(3) of the India-USA DTAA. Further, the Tax Officer mentioned that receipts from non-domain services (web hosting, web designing, etc.) are ancillary and subsidiary to domain registration, involve high technique, and fulfil the make available criteria. Therefore, these receipts are taxable as FTS under section 9(1)(vii) of the Act and Article 12(4) of the India-USA DTAA.

The taxpayer filed an appeal before the Tribunal. The taxpayer relied on various judicial rulings[8] wherein it was held that fiscally transparent entities are entitled to benefits of the relevant DTAA where a valid Tax Residency Certificate ('TRC') has been issued by the concerned foreign jurisdiction. The Tribunal relying on the said ruling observed that a distinction has been made between liability to taxation and actual payment of tax. The Tribunal ruled in favour of the taxpayer for the following receipts as under:

- Receipts from domain name registration - Relying on the ruling of the coordinate bench in the taxpayer's own cases[9] in the past years and the decision of the Hon'ble Delhi High Court in the taxpayer's case[10], wherein it was explicitly held that income from assisting customers in domain name registration is not royalty under section 9(1)(vi) of the Act or under Article 12(3) of the India-USA DTAA.

- Receipts from non-domain services - Relying on the ruling of the coordinate bench in the taxpayer's earlier cases[3], the Tribunal reasoned that these services do not make available any technical knowledge, experience, skills, know-how or processes, nor do they result in the transfer of any technical plan or design to the users. The users are not equipped to apply or deploy such services independently without recourse to the taxpayer. Hence, receipts from such services do not constitute FTS under section 9(1)(vii) of the Act or Article 12(4) of the India-USA DTAA.

JMP Insights - *This ruling offers clarity and establishes a favourable precedent for digital service providers operating in India. The ruling affirms that fiscally transparent entities are eligible for DTAA benefits if they hold a valid TRC.*

[8] ITA No. 1774/Del/2022, 40 SOT 51 (Mum-ITAT), TS 822-ITAT-202 (Del Trib.)
[9] ITA No. 1558 to 1561/Del/2022 & ITA No. 3027/Del/2023
[10] ITA No. 891/2018, ITA 261/2019 & 75/2023

- **Business Companies with genuine business activity and a valid Tax Residency Certificate are eligible for DTAA benefits**

  - Gagil FDI Ltd. vs The Assistant Commissioner of Income-tax [11]

The taxpayer is a Cyprus-based investment holding company, a subsidiary of GA Global Investments Ltd ('GA Global'), a company incorporated under the provisions of Cyprus company law. The taxpayer acquired shares of the National Stock Exchange (NSEIL) in 2014 from GA Global. GA Global had acquired shares from institutional investors through a private arrangement. Prior to the above transfers, a detailed scrutiny was carried out by various regulators in India viz. SEBI, RBI and FIPB and respective approvals for the said transfers were provided. In financial year 2020-21, the taxpayer sold the shares of NSEIL to third-party buyers and earned capital gains. The taxpayer filed a ROI, claimed benefits under the India-Cyprus DTAA for LTCG and offered dividend income at a reduced tax rate. The taxpayer had a TRC issued by the Cyprus revenue authorities for availing the benefits under the DTAA.

The case was selected for scrutiny assessment. The Tax Officer examined the ownership structure, list of Directors, authorised signatory for bank account and ultimate beneficiaries and concluded that the taxpayer was merely a shell company and a conduit controlled by a USA-based entity to bypass Indian tax laws. The Tax Officer mentioned that the address of the taxpayer in Cyprus and the agency that was providing professional secretarial services to the taxpayer both appear in the Panama leaks information. The Tax Officer concluded that the names of all companies appearing in the Panama Papers were shell companies. Therefore, he denied the DTAA benefits and taxed the capital gains and dividend income as per rates under the Act.

The taxpayer filed objections with the Dispute Resolution Panel ('DRP'). However, the DRP affirmed the Tax Officer's stance, deeming the approvals by various Indian regulators as mere routine paperwork with minimal scrutiny.

The taxpayer filed an appeal before the Delhi Tribunal. The Tribunal overturned the DRP's affirmations and found the Tax Officer's observations as "misconceived and contrary to facts on record". The taxpayer highlighted that the funds for investments were sourced from diverse jurisdictions, including Bermuda, Germany, Delaware and not exclusively from the USA. The tribunal emphasised the rigorous scrutiny by SEBI, RBI and FIPB during investment approvals in stock exchanges, asserting that these approvals are not "merely paperwork" and would inherently prevent shell companies from making such investments. Based on its review of Board meeting minutes and director participation, the Tribunal concluded that the taxpayer was managed from Cyprus, with key decisions being made by Cyprus-based directors.

The Tribunal relied on a previous co-ordinate bench decision in Saif II - Se Investments Mauritius Ltd[12], a similar case wherein DTAA benefits were granted. The Tribunal stated that

[11] ITA No. 2943/DEL/2023

[12] 154 taxmann.com 617 (Delhi-Trib)

once it's proven that a company genuinely operates in Cyprus and has a tax residency certificate, the claim that it's just a shell company falls apart.

JMP Insights - *This ruling reinforces the principle that possession of a valid TRC and evidence of genuine business activity in the treaty country are critical for availing DTAA benefits. The Tribunal's reliance on regulatory scrutiny by SEBI, RBI and FIPB underscores the importance of compliance with Indian regulatory frameworks in cross-border investment structures.*

DID YOU KNOW?

The Central Board of Direct Taxes ('CBDT') has extended the due date to file the income tax return for the financial year 2024-25 to 15 September 2025 for taxpayers who were required to file their return of income by 31 July 2025.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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