



Income Tax Newsletter

May 2023

CBDT issued the guidelines for the removal of difficulties under sub-section (3) of section 194BA of the IT act.

The Central Board of Direct Taxes issued circular 'Guidelines for removal of difficulties under sub-section (3) of section 194BA of the Income-tax Act, 1961' and shared that anyone who is responsible for paying any income by means of winnings through online games is required to deduct income tax on the net income from the user's account.

Additionally, the tax will be deducted at the time of withdrawal and at the end of the financial year.

For more information, read here-

<https://incometaxindia.gov.in/communications/circular/circular-5-2023.pdf>

Partial relaxation in filing Form 10F

CBDT had previously exempted from mandatory electronic filing of Form 10F till 31.03.2023, for those non-resident tax payers who are not having PAN and who do not require to have PAN. It has been now decided by the competent authority to extend the above-mentioned partial relaxation up to 30.09.2023. This is to mitigate any genuine hardships faced due to practical challenges by such category of tax payers. It is reiterated that such category of taxpayers are required to file Form 10F till 30.09.2023 in manual form, as was done prior to the Notification No. 3 of 2022.



Default tax regime

CBDT, vide circular no. 4 of 2023 has issued a clarification regarding deduction of TDS under section 192 read with sub-section (1A) of section 115BAC of the Income-tax Act, 1961, that provides for a new tax regime. The new tax regime is the default tax regime of the persons mentioned therein. However, under sub-section (6) of 115BAC, a person may exercise an option to opt out of the new tax regime.

CASE LAWS

Mere use of software by the distributor is not royalty

Deputy Commissioner of Income Tax vs. M/s. IBM Singapore Private Limited.
Case no- 177 & 178/Bang/2023

Facts- The AO treated the amounts received by the assessee from the sale of software to its Indian AE i.e. IBM India as royalty; both under the Act as well as the Double Taxation Avoidance Agreement. The assessee maintained that only licenses to use the software and did not part with any of its right over the products within the meaning of Copy right Act. The assessee placed reliance on the judgement of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Ltd. Vs. CIT 432 ITR.

Held- Given the definition of royalties contained in Article 12 of the DTAA's mentioned in paragraph 41 of the judgment, it was clear that there is no obligation on the persons mentioned in section 195 of the Income-tax Act to deduct tax at source, as the distribution agreements in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. As per the decision rendered by Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Ltd. (supra), sale proceeds received by the assessee on sale of software licenses cannot be categorized as "Royalty" within the meaning of provisions of DTAA.

Accordingly, the ITAT set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the addition made as "royalty" income.



AO cannot reject the income estimated by the assessee by following the profit margin method, without first rejecting the books of accounts

DCIT, Circle-4(1)(1), Ahmedabad vs. Sylvannus Builders and Developers Ltd
Case No- ITA No. 1923/Ahd/2019

Facts- The assessee is a Private Limited Company engaged in the business of Real Estate Developers and Construction. For the Assessment Year 2016-17, the assessee filed its Return of Income on 28.09.2015 declaring a total income of Rs. 3,11,94,560/-. The case was selected for scrutiny and assessment was completed u/s. 143(3) wherein the Assessing Officer held that the assessee in principal accepted Percentage Completion Method (PCM) and returned profit of Rs. 3,11,94,560/- whereas the Assessing Officer estimated the profit at 9.31% under Profit Margin Method (PMM) as per earlier assessment Year 2015-16 and accordingly made an addition of Rs. 2,76,69,223/-. The assessee has relied upon the decision in the case of CIT v. Shakti Industries (2013) (Gujarat) in support of the proposition that additions made without rejecting the books of accounts would not be justifiable. In the case of the appellant company, the AO has not rejected the books of accounts.

Held- The Additional Commissioner advised the A.O. to accept the manner of the assessee's company in recognizing income because it is sound and in line with the Guidance Note published by the ICAI concerning construction activity businesses and has no flaws or weaknesses.

The ITAT rejected the department's appeal and removed the addition.

