

Income Tax Newsletter

September 2022

CBDT exempts non-residents having no PE in India from clutches of section 206C(1G)

In exercise of the powers conferred by clause (ii) to fifth proviso to sub-section (1G) of section 206C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as “Act”) and in suppression of the notification of the Government of India, Central Board of Direct Taxes published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 1494(E), dated the 30th March 2022, except as respects things done or omitted to be done before such suppression, the Central Government hereby notifies that the provisions of sub-section (1G) of section 206C of the Act shall not apply to a person (being a buyer) who is a non-resident in terms of section 6 of the Act and who does not have a permanent establishment in India.



CBDT amends Rule 17 & Form 10 providing accumulation of income by entity approved u/s 10(23C)

Under the provisions of the Income-tax Act, trust or institution is required to apply 85% of its income during any previous year. If it is not able to apply 85% of its income during the previous year, it can accumulate such income for a period not exceeding 5 years. As per Section 11(2), the accumulation of income is allowed subject to the fulfilment of certain conditions. However, there were no such conditions provided explicitly under the third proviso of Section 10(23C) to provide for accumulation-related conditions similar to Section 11.

The Finance Act, 2022 has inserted Explanation 3 to the third proviso of Section 10(23C) to provide for accumulation-related conditions similar to Section 11.

Rule 17 of the Income-tax Rules provides for furnishing of Form 10 and Form 9A. If a trust is not able to apply 85 percent of its income in a particular year, it can accumulate the shortfall to be used for religious or charitable purposes within the next 5 years. This accumulation is allowed if the assessing officer is informed in Form 10 about the purpose of the accumulation and the period for which the income is being accumulated.

Now, the Central Board of Direct Taxes (CBDT) has amended Rule 17 to incorporate norms for filing of Form 10 by an entity approved under section 10(23C). Rule 17 has been amended to provide that a statement in Form no 10 shall be furnished to the Assessing Officer or the prescribed authority under clause (a) of Explanation 3 to the third proviso to section 10(23C).

The form shall be furnished before the expiry of the time limit to file the original return of income under section 139(1). The CBDT has also amended Form 10 incorporating necessary changes.

CBDT issues additional guidelines on deduction of tax at source u/s 194R

The Finance Act, 2022 had inserted a new section 194R to the Income-tax Act, regarding removal of difficulties in the Section 194R which casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source at 10 per cent.

This Section mandates a person to deduct tax at source at 10 per cent of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. Though the benefit or perquisite may or may not be convertible into money but should arise either from carrying out of business, or from exercising a profession, by such resident.



CASE LAWS (INCOME TAX)

ADDITION TOWARDS UNEXPLAINED CASH CREDIT UNJUSTIFIED AS EVIDENCES AND BOOKS OF ACCOUNT NOT REJECTED

Case Name: Arun Garg Vs ITO (ITAT Chandigarh)

Case Number: ITA No. 13/Chd/2022

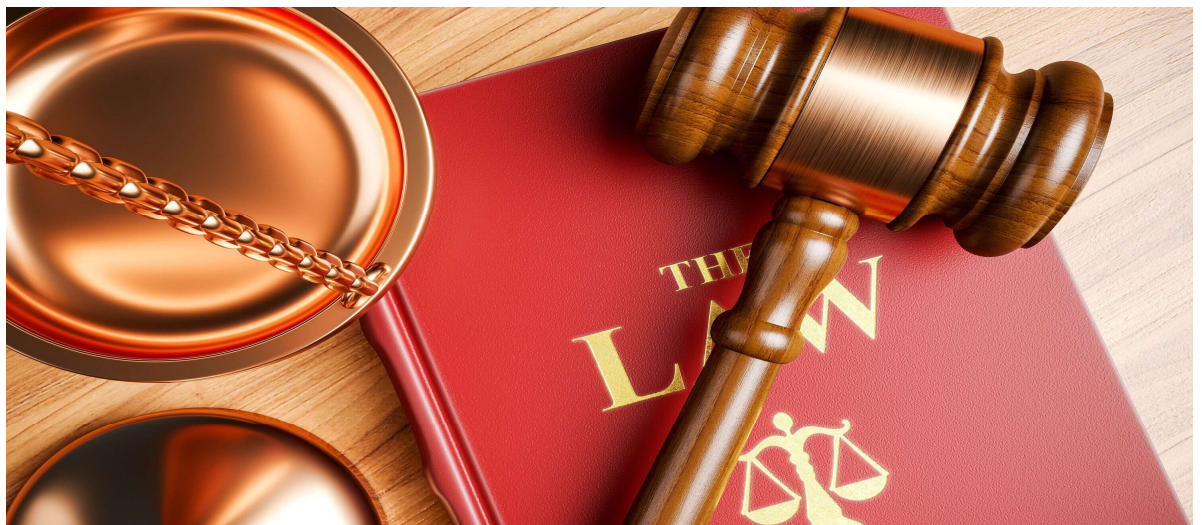
Case Date: 05/08/2022

Held that addition u/s. 68 and 69A unsustainable as evidence relating to cash deposited submitted and not doubted by AO and also books of account of the assessee are also not rejected u/s 145(3).

As per the Annual Information Report (AIR), it was observed that the assessee had deposited cash in two bank accounts (both with Union Bank of India) to the tune of Rs. 82,50,000/- between the period 09.11.2016 and 30.12.2016. After considering the submissions of the assessee, the assessment was completed at an income of Rs. 1,05,50,120/- after making addition on account of cash credits u/s 68 and 69A read with section 115BBE of the Income Tax Act, 1961 to the tune of Rs. 77,70,000/-. Aggrieved, the assessee preferred to appeal before the NFAC which was dismissed. Now, the assessee has approached the Tribunal challenging the dismissal of the appeal.

All the parties from whom the advance of different amount is received have filed confirmed copies of account mentioning their PAN, address, affidavits duly attested and evidence of filing their Tax Returns along with cash summary for the Financial Year 2016-17 which confirms the transactions of the assessee, both with regard to the advance amount paid by each of the related concerns which was subsequently adjusted against the sales made to these four parties and also, on account of the deposit of cash by each one of them on various dates towards the Housing Loan of the assessee to the tune of Rs. 48.50 lacs. Such evidence, as furnished, have not been doubted by the Assessing Officer and even the sales as made by the assessee to the four relates parties against the advance of Rs. 28 lacs received earlier, have not been doubted, nor purchases in the hands of such related parties have been doubted in their hands. Held that the opening stock, purchases, sales and closing stock in the hands of the assessee have been accepted by the Assessing Officer and the books of accounts of the assessee have also not been rejected u/s 145(3) of the Act and as such the entries

relating to the related parties in effect stand accepted and, as such, the confirmation of the two additions i.e. both in regard to the amount of Rs. 28 lacs and Rs. 48.50 lacs are not justified.



ADDITION U/S 68 OF DULY ACCOUNTED CASH SALES IS UNJUSTIFIED

Case Name: ITO Vs Parmanand Gupta (ITAT Raipur)

Case Number: ITA No. 82/RPR/2017

Case Date: 04/08/2022

Held that the re-assessment and addition of the duly accounted cash sales of the assessee as unexplained cash credits u/s 68 by the AO without rejection of the books of account of the assessee u/s 145(3) of the Act is unjustified

During the course of the re-assessment proceedings, it was observed by the A.O that there were cash deposits amounting to Rs. 5,22,81,663/-. However, as the assessee had failed to substantiate the nature and source of the cash deposits in his bank accounts on the basis of supporting documentary evidence, the A.O after rejecting his explanation held the entire amount of cash deposits of Rs. 5,22,81,663/- as unexplained cash credits u/s.68 of the Act. Accordingly, the A.O vide his order passed u/s.143(3) r.w.s.147, dated 15.03.2016 assessed the income of the assessee at Rs. 5,28,66,726/-. Aggrieved, the assessee carried the matter in appeal before the CIT(A). CIT(A) deleted the addition. Being aggrieved, revenue has preferred the present appeal.

Held that the re-characterization of the duly accounted cash sales of the assessee as unexplained cash credits u/s 68 by the AO without rejection of the books of account of the assessee u/s 145(3) of the Act is beyond comprehension. We find that the AO had accepted the claim of the assessee that the cash deposits in his bank accounts were sourced out of the duly accounted cash sale proceeds. Accordingly, addition of the same as unexplained cash credit u/s 68 is unjustified.

