

Income Tax Newsletter

December 2022



Partial relaxation with respect to electronic submission of Form 10F by selected category of taxpayers in accordance with the DGIT (Systems) Notification No. 3 of 2022.

The Central Board of Direct Taxes (CBDT) has given partial relief to non-resident taxpayers by exempting them from mandatory electronic filing of Form 10F until March 2023. Filing this form is required to claim the benefits of tax treaty.

The Form 10F is signed physically by non-resident taxpayers and furnished along with the tax residency certificate to resident payers for the purpose of determining withholding tax implications.

CBDT notifies Ontario Inc. as pension fund- section 10(23FE) vide Notification No. 128/2022-Income-Tax, Dated: 28.12.2022

The Central Government specifies the pension fund, namely, 1000242244- Ontario Inc. (the assessee) as the specified person for the

purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 subject to the fulfillment of certain conditions.

Violation of any of the conditions as stipulated in the said clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

<https://incometaxindia.gov.in/communications/notification/notification-128-2022.pdf>





CASE LAW UPDATES

ACIT Vs Rosebys
Interiors India Ltd
(ITAT Ahmedabad)
ITA No. 1047/Ahd/2015

Advertisement expense towards creation of Brand image is revenue in nature.

ITAT Ahmedabad held that advertisement expenses incurred at the time of installation of additional machinery in the existing line of business resulted in any enduring benefit is revenue expenditure. Further, advertisement expenses incurred to create brand image is revenue expenditure.

Facts-

The assessee revised its return of income claiming advertising expenses to the tune of Rs. 21,28,55,537. During the course of assessment, AO observed that the said advertisement expenses were not debited to the profit and loss account by the assessee. Instead, as per the balance sheet of the assessee, the said advertising expenses have been accounted as “capital work in progress (brand building expenditure)”. In response to show cause notice issued by AO, the assessee submitted that the assessee had capitalised the above expenditure in the books of account, but since the expenditure was purely in the nature of revenue, the assessee claimed these expenses in the (revised) return of income as revenue expenditure. However, AO did not accept the assessee’s contention and disallowed the above advertisement expenses claimed by the assessee by way of filing revised return of income. CIT(A) allowed the assessee’s appeal. Being aggrieved, revenue has preferred the present appeal.

Held-

Thus, it could not be held that the advertisement expenses incurred by the respondent-assessee at the time of installation of additional machinery in the existing line of business resulted in any enduring benefit, so as to be treated as capital in nature. Thus, the advertisement expenses incurred by the assessee to create brand image were allowable as revenue expenditure.

**Adobe Systems
Software Ireland Ltd
Vs ACIT (ITAT Delhi)**
ITA No.774/Del/2022

Facts-**Provisional attachment order passed without valid reasoning is untenable.**

ITAT Delhi held that amount received from the supply of software and automated services, are not taxable in India.

The assessee is a non-resident corporate entity incorporated in Ireland. The assessee is a wholly owned subsidiary of Adobe System, USA and is engaged in licensing software in India through distributors to the end users. In the return of income filed for the impugned assessment year, the assessee offered an income of Rs.12,36,13,520 being in the nature of fee for technical services (FTS). However, couple of other receipts from software supply and automated services were not offered to tax in India as the assessee claimed that they are not taxable in India. AO, while examining the aforesaid claim of the assessee, found that while dealing with identical nature of receipts in earlier years, it was held that the assessee has a dependent agent PE and fixed place PE in India in the form of an Indian Subsidiary viz. Adobe Systems India Pvt. Ltd., which provides marketing support services to the assessee. Thus, the Assessing Officer concluded that Adobe India is a dependent agent/fixed place PE of the assessee in India. Therefore, AO held that the receipts from software supply and automated services, being attributable to the PE, are taxable in India. DRP upheld the additions made by AO.

Held-

In the transfer pricing proceedings, the TPO, has observed that the international transaction between the assessee and the Indian AE are at arm's length and has not proposed any further adjustment, in so far as, it relates to transaction of business support services. Therefore, the question which arises for consideration is, whether in such a scenario, still, profit can be attributed to the PE in India. While deciding identical issue in assessee's own case in preceding assessment years, the Tribunal in the order has held that the finding of PE is also without cogent basis. Thus, they hold that the amount received by the assessee from the supply of software and automated services, are not taxable in India. The AO directed to delete the additions.