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 April 2025:

Income tax rulings

- **Unabsorbed Depreciation to be added to the WDV of depreciable assets of the amalgamating company; conditions of section 72A apply only in case of carry forward and set off of unabsorbed depreciation**

  - Technova Imaging Systems Ltd. vs DCIT[1]

The taxpayer manufactures and sells aluminium based presensitised lithographic plates, chemicals, and polyester-based reprographic films. TechNova Graphic Systems Pvt. Ltd. and Image Printmakers Pvt. Ltd. (together referred as ‘Transferor companies’) amalgamated into the taxpayer with effect from April 1, 1990. The Scheme of amalgamation was approved by the Bombay High Court (‘Bombay HC’).

The transferor companies had unabsorbed depreciation from the previous Financial Year (‘FY’). The taxpayer filed his return of income for FY 1990-91 and 1991-92, claiming depreciation, which became a point of contention in the dispute. In its return of income, the taxpayer did not claim carry forward of the unabsorbed depreciation of the amalgamating companies, instead calculated depreciation using the Written Down Value (‘WDV’) of the assets of the amalgamating companies’ after adding back the unabsorbed depreciation.

The taxpayer’s case was selected for scrutiny for both years. The Tax officer restricted the depreciation allowance claimed by the taxpayer stating that under Section 72A of the Income Tax Act,1961 (‘the Act’), approval from the Central Government was required for carrying forward and setting off unabsorbed depreciation, which the taxpayer did not obtain. The Tax Officer denied the claim, citing non-compliance with Section 72A of the Act, which led to an appeal.

The Commissioner of Income-Tax (Appeal) (‘CIT(A)’) allowed the appeal, stating that Section 72A of the Act was not applicable because the taxpayer was not trying to carry forward depreciation but was adjusting the WDV of assets. This was in line with Explanation 2 to Section 43(6) of the Act where depreciation actually allowed had to be taken into the account. Upon the Revenue's appeal, the Tribunal overturned the CIT(A) decision.

The Bombay HC overturned the Tribunal's order, which had required the amalgamated company to have Central Government approval under Section 72A of the Act to adjust the WDV of assets. The Bombay HC concluded that Section 72A did not apply in this case, as taxpayer was not attempting to carry forward and set off unabsorbed depreciation of the

[1] ITA No. 405/2003

amalgamating company. The Bombay HC held that taxpayers claim focused on accurately determining WDV by considering depreciation actually allowed. The Bombay HC, in its decision, also drew upon several Supreme Court judgments that clarified the meaning of "actually allowed" depreciation. These judgments established that the term refers to depreciation that has been "actually taken into account or granted and given effect to," rather than depreciation that was merely notionally permissible.

The Bombay HC upheld the CIT(A) view that the unabsorbed depreciation of the amalgamating companies should be added to the WDV of the block of assets of the amalgamated company. The High Court agreed with the Madras High Court decision in EID Parry (India) Ltd[2], stating that it was directly applicable to the present case.

JMP Insights – *This ruling allowed the amalgamated company to compute the WDV of assets after adding the unabsorbed depreciation of the amalgamating companies. Since, the issue did not involve carry forward of unabsorbed depreciation, such adjustment did not require Central Government approval.*

- **Subscription fees for standardised content, not technical services**

  - Commissioner of Income Tax (Intl Tax) v Springer Nature Customer Service Centre GmbH[3]

The taxpayer is a part of the Springer Nature group engaged in publishing books, journals and content relating to science and technology. The taxpayer had entered into a commissionaire agreement with its group entity in India (‘SNIPL’) for the promotion, sale and distribution of printed products (books and journals) and e-products (online books, journals and their archives). The taxpayer also earned subscription fees during FY 2019-20 and FY 2020-21.

The tax officer treated both the receipts (i.e., commission income as well as subscription fees) as Fees for Technical Services (‘FTS’) chargeable to tax under the Act as well as under India Germany DTAA.

The Delhi Tribunal ruled in favour of the taxpayer relying on the taxpayers’ own case for FY 2012-13 against which the Tax officer appealed before the Delhi High Court (‘Delhi HC’).

In relation to commission income of the taxpayer, the Delhi HC relied on the taxpayer’s own case for FY 2012-13 and held that commission income would not constitute FTS for the taxpayer. In relation to the subscription fees, the Delhi HC referred to following judicial precedents that have elucidated the definition and essential characteristics for classifying income as FTS.

[2] 23 Taxmann 348 [2012]
[3] ITA 1/2025 and ITA 3/2025 (Delhi High Court)

i. The Madras High Court's ruling in Skycell Communications[4] provided an interpretation of 'Fees for Technical Services' under the Act. The court elucidated that while the definition encompasses managerial, technical, and consultancy services (excluding specific project-related and salary income), it necessitated the active provision of a technical service. Mere use of technology-enabled facilities would not qualify as receiving a technical service.

ii. In the decision of Bharti Cellular Ltd.[5], the court affirmed the principle established in Skycell Communications by applying the rule of 'noscitur a sociis' to interpret FTS. The court reasoned that the term "technical," situated between "managerial" and "consultancy," would derive its meaning from these associated terms, both of which necessitated human involvement.

iii. The Supreme Court's decision in case of Kotak Securities[6] further established that for a payment to qualify as FTS, the underlying service must be specialised, exclusive, or customised to the specific needs of the user. Standardised, automated services or facilities accessible to all for a fee, would not meet this criterion and are therefore not considered 'technical services' for tax purposes.

iv. In the case of Relx Inc.[7], the Delhi HC reasoned that providing mere access to a database does not constitute the rendering of managerial, technical, or consultancy services as contemplated by the Act's definition of FTS and the taxpayers' role was limited to granting access, without providing any additional managerial, technical, or consultancy assistance to the subscribers.

Drawing upon established judicial interpretations of FTS, the Delhi HC observed that the expression 'rendering of technical services' must be construed in a narrow sense where specialised services are rendered to the service recipient, requires human intervention and is not in relation to mere access of technical database. In view of the above, the Delhi HC ruled in favour of the taxpayer determining that the subscription fees in question would not constitute FTS for the purposes of taxation.

JMP Insights – *The Delhi High Court's ruling in the taxpayer's case firmly establishes that subscription fees for standardised digital content, even if technical or scientific in nature cannot be classified as FTS under the Act.*

This creates a favourable precedent for digital content providers, database services, and information aggregators who offer standardised products to multiple subscribers.

[4] (2001) 251 ITR 53 (Madras HC)
[5] (2009) 319ITR 139
[6] (2016) 383 ITR 1
[7] [2024] 160 taxmann.com 109 (Delhi)

- **Insurance companies not subject to disallowance under Section 14A and can claim a deduction for provisions for IBNR and IBNER**

  - Cholamandalam MS General Insurance Co. Ltd v DCIT[8]

The taxpayer engaged in the business of General Insurance in India and while computing its income for the relevant FY the taxpayer has computed its income in accordance with Section 44 of the Act read with Rule 5 of First Schedule of the Act.

During assessment the tax officer disallowed certain expenses by applying Section 14A of the Act, arguing that they are related to exempt income from insurance businesses. The Tax Officer also disallowed the provisions for 'Incurred But Not Reported' ('IBNR') claims and 'Incurred But Not Enough Reported' ('IBNER'), treating them as inadmissible provisions under Section 37 of the Act.

The taxpayer appealed the Tax Officer's disallowances to the CIT(A). The CIT (A) allowed the appeal, reasoning that Section 14A of the Act did not apply to insurance companies and that the IBNR and IBNER provisions were allowable because they were based on scientific actuarial calculations that established ascertained liabilities.

In the appeal filed to the Tribunal by the Revenue, the Tribunal agreed with the Tax Officer, upholding the disallowance and reversed the order of the CIT(A).

On appeal by the taxpayer, Madras HC held that Section 44 read with Rule 5 of the First Schedule of the Act excludes the application of Sections 28 to 43B and 199 of the Act for insurance companies. Consequently, Section 14A of the Act has no application to insurance companies. Rule 5 provides a complete code for calculating insurance business profits based on IRDAI regulations, without allowing for adjustments outside this framework. This clearly indicates that the law intends a distinct profit computation method for insurance businesses, separate from the provisions where Section 14A of the Act would apply.

Further Madras HC concluded that the Tribunal incorrectly disallowed IBNR and IBNER provisions. These provisions are essential to insurance accounting, reflecting the uncertainty of claim reporting and settlement. The court emphasised that insurance companies must adhere to IRDA regulations, which recognize and allow for provisions for IBNR and IBNER. Because these provisions are based on sound, scientific calculations, they qualify as "ascertained liability" in the accounts, as per the IRDA regulations. The Madras HC ruled this decision taking the reliance on the case from various similar decisions from Delhi HC in *PCIT v Care Health Insurance Ltd*[9] and *CIT v Whirlpool of India Ltd*[10].

JMP Insights *– The Ruling confirms that Insurance companies have their own self-contained tax code as per Section 44 read with First Schedule of the Act. The High Court's support for IBNR and IBNER claim allowances highlights the importance of IRDAI regulations and the validity of actuarial calculations for tax deductions*.

[8] TCA No. 755, 855 of 2018, 49,51 & 52 of 2023

[9] 164 Taxmann 53 (2024)

[10] 20 Taxmann 683 (2012)

Business Loss set-off against FTS income for a foreign company, citing beneficial domestic law

- Hyosung Corporation V ACIT[11]

The taxpayer, a Korean company engaged in power production, had a Permanent Establishment ('PE') in India. It had two sources of income from India:

- Business Income earned by servicing to clients through its PE and;
- FTS and interest on IT Refund, received directly by the overseas Head office ('HO') without involvement of the PE in India.

The taxpayer filed a Return of Income ('ROI') declaring Nil income and claiming a refund of taxes paid. This claim involved a set off of a business loss attributable to a PE against Income from Other Sources.

The tax officer disallowed such a set off, contending that the PE and HO are separate entities, so their income cannot be set off against each other. Article 7 of the India-Korea DTAA ('Tax Treaty') does not have enabling provisions to permit such set off. In this connection, the tax officer relied on the Delhi Tribunal's rulings in M/s Iveco Spa, Italy[12] and the Uttarakhand High Court's decision in Samsung Heavy Industries Co Ltd[13].

Further, Business income is taxable on a net basis, whereas FTS is taxable on a gross basis as per Section 115A. Therefore, the Business losses attributable to the PE should not be allowed to be set off against FTS income.

Against the above disallowance, the taxpayer appealed before the DRP. The taxpayer contended that Section 71 of the Act permits the set-off of business losses against Other Income. Reliance was placed on the Bangalore Tribunal's ruling in IBM India Pvt Ltd[14] and the Mumbai Tribunal's ruling in Hitachi Zosen Corporation[15], which allowed the set-off of losses against income taxable at a lower tax rate. The DRP, however, upheld the tax officer's order.

The taxpayer, therefore, filed an appeal before the Delhi Tribunal.

Before the Delhi Tribunal, the taxpayer contended that the PE and HO belong to the same entity, therefore, the taxpayer should be allowed to claim the set off of business loss against income as an inter-head adjustment. The taxpayer relied on the Mumbai Tribunal's Special Bench ruling in Sumitomo Mitsui Banking Corporation[16]. This ruling considered the Indian PE of a Group Entity (GE) as a single taxpayer under the Act.

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[11] ITA No. 2943/DEL/2023
[12] ITA No 5696/Del/2012
[13] 42 Taxmann.com 140
[14] ITA No 489 to 498/Bang/2013
[15] (1999) 68 ITD 235 (Mum)
[16] 19 Taxmann 364 (Mumbai)(SB)

Further, the Explanation to Section 9(1)(v) of the Act (which is the source rule for the interest income) explicitly treats PEs and HO as separate entities, however, no such distinction exists under Section 72 for carry forward and set-off of business losses.

Since FTS was not attributable to the PE, it is taxable under Section 115A of the Act on a gross basis. Section 115A prescribes only the tax rate, not the computation of total income or the applicability of set-off. Further, Section 115A restricts the deduction of expenses, not the set-off of losses.

Tribunal's Decision

The Delhi Tribunal allowed the taxpayer's appeal.

- The PE and the HO are part of a single taxable entity under the Act.
- The total income is computed by adding income from all sources, followed by the provisions relating to set off and then the provisions relating to the rate of tax. Losses under one income head can be set off against income from other heads unless specifically not allowed.
- The Tribunal distinguished the taxpayer's case from the M/s Iveco Spa, Italy ruling relied upon by the tax officer. It highlighted that Section 44DA applies to royalty/FTS earned through a PE in India, whereas the taxpayer earned the FTS directly without PE involvement.
- Certain sections of the Act disallow expenditure and loss, Section 115A(3) only disallows expenditure. Since the DTAA was silent on loss set-off, the beneficial provisions of the Act should apply. While the Treaty governs tax rates and income characterisation, the computation of total income, including set off of losses is governed by the Act, unless explicitly restricted.

JMP Insights *– The ruling offers a positive interpretation for taxpayers, emphasizing the concept of total income and recognizes the provisions for set off of inter-head losses under the provisions of the domestic law.*

Notifications

- **Applicability of Tax Collected at Source on ten new categories of luxury goods**

The Central Board of Direct Taxes ('CBDT') vide Notification No. 36/2025 dated 22 April 2025 has expanded the scope of Tax Collected at Source ('TCS') under Section 206C of the Act to include the sale of certain specified goods exceeding INR 1 million in value.

The list of goods on which the TCS is applicable from 22 April 2025 includes

- any wristwatch
- any art pieces such as antiques, painting, sculpture
- any collectibles such as coin, stamp
- any yacht, rowing boat, canoe, helicopter
- any pair of sunglasses
- any bag such as handbag, purse

- any pair of shoes
- any sportswear and equipment such as golf kit, ski-wear
- any home theatre system
- any horse for horse racing in race clubs and horse for polo

The CBDT has also amended Form 27EQ (vide Notification No. 35/2025) to include the aforementioned list of goods in the reporting table.

- **Instructions for application of GST Registrations**

The Central Board of Indirect Taxes and Customs ('CBIC') has noted concerns regarding difficulties faced by applicants in obtaining GST registration, particularly with respect to documentation to be submitted as proof of principal place of business, constitution of business, identity details of authorised signatory, owner etc.

In response to the above concerns CBIC, vide Instruction No 03/2025-GST dated 17 April 2025, have prescribed an indicative list of documents to be submitted.

Sr No	Particulars	Documents to be submitted
1. Principal place of Business		
(a)	Owned premises	Any one of the following: Property tax receipt; Municipal Khata copy; Electricity Bill
(b)	Rented premises - agreement is available	Registered Lease/Rent Agreement + Documents specified point (a) above for evidencing ownership of lessor Or Unregistered Rent/Lease agreement + Identity proof of lessor + Documents specified point (a) above for evidencing ownership of the lessor
(c)	Premises owned by spouse/relative etc.	Consent letter from the spouse/relative etc + Identity proof of such spouse/relative and + Documents specified point (a) above for evidencing ownership of the lessor
(d)	Shared premises - Rent agreement available	Same as specified in Point (b) above

(e)	Shared premises - Rent agreement not available	Consent letter from lessor + Identity proof of lessor + Documents specified point (a) above
(f)	Rented premises - agreement is not available	Affidavit on non-judicial stamp paper as may be prescribed + Documents specified in (a) evidencing ownership of the lessor
(g)	Place of business located in SEZ	SEZ certificate issued by the government
2. Constitution of Business		
(a)	Applicant is a partner	Partnership deed
(b)	Applicant is Society, Trust, Club, Government Department, Association of Persons or Body of Individuals, Local Authority, Statutory Body and Others etc.	Registration Certificate/Proof of Constitution

Where the application is found to be complete and without any deficiency, the GST officer should approve the application within seven working days of submission of the application. In cases where the application is flagged as risky based on a data analysis portal, registration shall be granted within 30 days.

Difficulties in the implementation of these Instructions shall be informed to the Board at – gst-cbec@gov.in.

DID YOU KNOW?

CBDT has notified Income Tax Return (ITR) Forms 1 to 7, applicable for filing the return of income for financial year 2024-25.

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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JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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