

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS

International Taxation
ISSUE JUNE 2024

Highlights



- Net direct tax collections for FY 2024-25 grow at 22.19%, Advance Tax at 27.34%
- CBDT notified 363 as Cost of Inflation Index for FY 2024-25
- CBDT notified Sec.10(46) exemption for 'Kerala Autorickshaw Workers Welfare Fund Scheme, Kollam'
- CBDT excluded RBI from definition of specified person under Sec.206AB and 206 CCA
- OECD Global Forum publishes EOIR peer review; Egypt 'Partially Compliant'
- Moldova joins the Inclusive Framework on BEPS and participates in the agreement to address the tax challenges arising from the digitalisation of the economy
- Mechanism to resolving disputes with tax department -: CIT(A) and DRP
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News Highlights



Net direct tax collections for FY 2024-25 grow at 22.19%, Advance Tax at 27.34%

CBDT had issued a press release detailing the provisional direct tax collections for the fiscal year 2024-25 as of June 17, 2024. The net direct tax collections have reached Rs. 4,62,664 crores, a 20.99% increase compared to Rs. 3,82,414 crores in corresponding period of the preceding Financial Year (i.e. FY 2023-24)

The provisional gross collection of direct taxes for FY 2024-25 stands at Rs. 5,15,986 crores, up 22.19% from Rs. 4,22,295 crores in the corresponding period of the preceding year. Additionally, advance tax collections for FY 2024-25 have surged by 27.34%, totaling Rs. 1,48,823 crores, compared to Rs. 1,16,875 crores in the same period last year.

Moreover, refunds amounting to Rs. 53,322 crores have been issued in FY 2024-25, marking a 33.70%

increase issued during the same period in the preceding year.

CBDT notified 363 as Cost of Inflation Index for FY 2024-25

CBDT, vide Notification No. 44/2024, notified 363 as Cost Inflation Index for FY 2024-25. The notification is effective from Apr 1, 2025 and shall apply to AY 2025-26 and subsequent AYs. The previous Cost Inflation Index for FY 2023-24 was 348

CBDT notified Sec.10(46) exemption for 'Kerala Autorickshaw Workers Welfare Fund Scheme, Kollam'



CBDT vide notification No. 41 of 2024 provided income tax exemption under Section 10(46) to 'Kerala Autorickshaw Workers Welfare Fund Scheme. The exemption is provided for the specified incomes only, provided that the 'Kerala Autorickshaw Workers Welfare Fund Scheme, shall not be engaged in any commercial activity and the nature of the specified income shall remain unchanged throughout the financial years.

CBDT Excludes RBI in the definition of specified person under Sec.206AB & 206CCA

CBDT, vide Notification No. 45/2024 and 46/2024, excluded RBI in the definition of specified person for the purposes of Section 206AB and 206CCA. Section 206AB of the Act provides a special provision for the deduction of tax at source for non-filers of income-tax returns whereas Section 206CCA deals with collection of tax at source for non-filers of income tax returns.

The notifications are in force from May 27, 2024.



Indian/Global Updates



OECD Global Forum publishes EOIR peer review, Egypt 'Partially Compliant'

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes released peer review reports for Armenia, Bulgaria, Cameroon, Egypt, Georgia, Kenya, Malta, and Romania. Since 2016, over 110 jurisdictions have been reviewed, with 88% rated as "Compliant" or "Largely Compliant," 10% as "Partially Compliant," and 2% as "Non-Compliant." The latest reports show Kenya, Georgia, Malta, Romania, Bulgaria, and Cameroon as "Largely Compliant," while Egypt is "Partially Compliant." Egypt, a member since 2016, has made significant efforts to comply but needs to improve beneficial ownership information implementation. Armenia, reviewed for the first time since joining in 2015, needs improvements in legal and beneficial ownership information availability.



Transfer Pricing / B E P S



Moldova joins the Inclusive Framework on BEPS and participates in the agreement to address the tax challenges arising from the digitalisation of the economy

The Republic of Moldova has taken a significant step in combating tax avoidance by joining the OECD/G20 Inclusive Framework on BEPS, a global initiative with over 145 member countries and jurisdictions.

By becoming a member, Moldova is committing to addressing the tax challenges brought about by the digitalisation of the economy. This includes participating in the Two-Pillar Solution, aimed at reforming international taxation rules to ensure multinational enterprises (MNEs) pay their fair share of taxes wherever they operate.

As member of the Inclusive Framework, Moldova will contribute to implementing the BEPS package. This

effort focuses on tackling tax avoidance, enhancing the coherence of international tax rules, and fostering a more transparent tax environment.



Issue of the month

Mechanism to resolving disputes with tax department -: CIT(A) and DRP

Introduction

The Indian tax system incorporates structured mechanism for addressing taxpayer grievances and disputes.

A taxpayer aggrieved with income assessed / order(s) passed tax authorities is provided various alternative and successive platforms to address its grievances. While traditionally successive appellate forums like Commissioner of Income Tax (Appeals) ("**CIT(A)**"), Income Tax Appellate Tribunal ("**ITAT**"), High Court ("**HC**") and Supreme Court ("**SC**") were available to a taxpayer, in order to address the growing litigation, an alternative forum was introduced in the year 2009 to prevent the litigation at the initial / assessment level itself. Finance Act 2009 introduced an option to taxpayers to approach a panel named Dispute Resolution Panel ("**DRP**") before conclusion of assessment itself.

As per the scheme of law in cases where the Assessing Officer ("**AO**") wishes to make adjustment to the declared income of certain category of taxpayers is required to pass a draft assessment order rather than conclusive assessment order and taxpayers have an option to accept or object to such draft assessment. If the taxpayer chooses to accept the variations proposed by AO, the final assessment, is passed. However, the taxpayer still has a right to contest the variations made by AO before CIT(A).

In case variation(s) proposed by the AO in draft assessment order are not acceptable to taxpayer, he may file objections against such draft assessment order, with DRP, which is a panel of three Commissioners. DRP considers the objections of taxpayer and issues binding directions to AO, who is required to pass final assessment order in compliance with such directions.



Let us discuss the intricacies involved for a taxpayer in choosing between CIT(A) and DRP.

CIT(A)

CIT(A) is considered to be the first appellate authority which has been designated and empowered u/s 246A of the Income Tax Act, 1961 ("**the Act**") for the purpose of hearing and adjudicating the appeals of an aggrieved taxpayer.

The issues / orders against which an appeal may be filed with the CIT(A) have been prescribed in section 246A.

The scope of power of CIT(A) u/s 251 is co-terminus with AO and CIT(A) can confirm, reduce or enhance the assessment order under an appeal and in appeals involving penalty, the CIT(A) may confirm, cancel or vary (by reducing or enhancing) the amount of penalty.

Appeal before CIT(A) is required to be filed in Form 35, within 30 days of receipt of the order sought to be appealed.

CIT(A) after examining the facts, legal points & evidences presented by the taxpayer disposes the appeal. However, there is no time limit for disposal of appeal by CIT(A).

Appeal process before CIT(A) is not time bound for adjudication prolonging uncertainty for taxpayer.

In order to reduce tax disputes and keeping in view the fact that flow of foreign investment is extremely sensitive to prolonged uncertainty in tax matters, an alternative forum for tax dispute resolution i.e. DRP was formed, which would help in rendering expedited disposal of cases.

DRP

The mechanism of raising objections, against the draft assessment order, before DRP has been prescribed u/s 144C of the Act.

DRP is a collegium comprising of three Principal Commissioners or Commissioners of Income Tax, as constituted by the Board.

DRP acts as a panel constituted to resolve tax disputes of an eligible assessee. Here, an eligible assessee means a non-resident or a foreign company or any taxpayer in whose case transfer pricing additions have been made.

Key Features:

Some of the key features of DRP are as follows:

a) An eligible assessee aggrieved by a draft assessment order passed by an AO can challenge the same before DRP within 30 days of receipt of such draft assessment order.

b) DRP has been empowered to issue directions u/s 144C in response to objections raised by an eligible assessee, to AO for completion of assessment.

c) DRP has the power to confirm, reduce or enhance the variations so proposed in the draft order by the AO.

d) DRP can also enhance the variation or consider any matter arising out of assessment proceedings, even if the same was not by the eligible assessee.

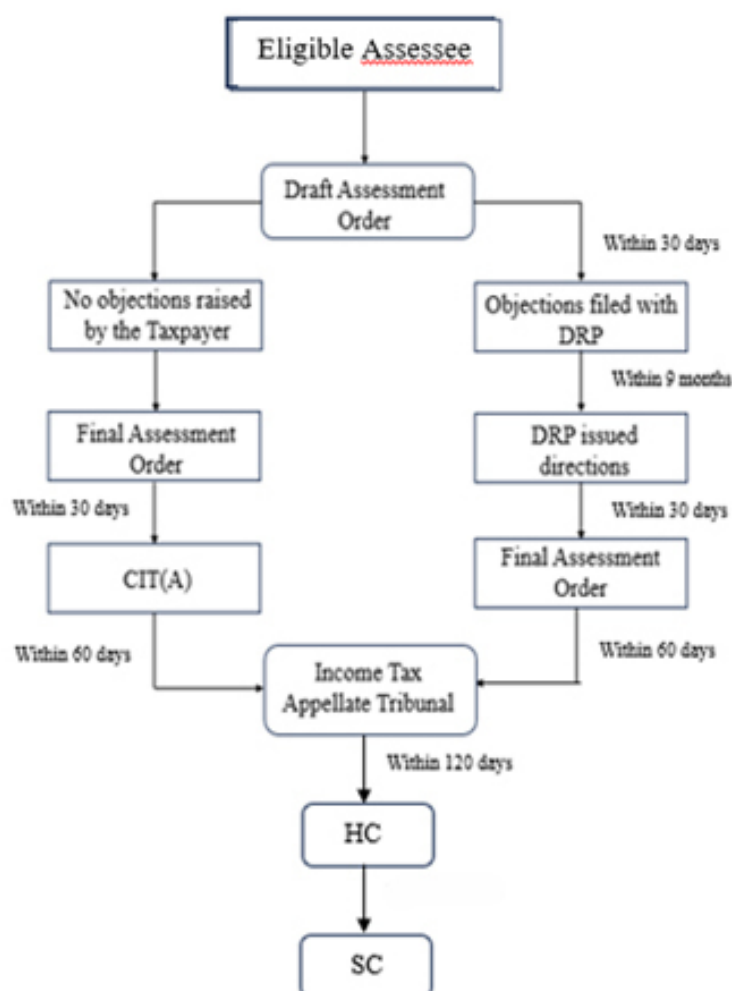
e) The directions by the DRP shall be binding on the AO as the final assessment order can only be passed giving effect to the same.

f) DRP is bound to serve AO with its directions in 9 months from the end of the month in which the draft assessment order was received by the eligible assessee.

g) Final assessment order is passed by AO, giving effect to the DRP's directions within 30 days of receiving such directions by DRP.

h) The AO cannot file an appeal against an order passed pursuant to the directions of DRP before ITAT, as prescribed u/s 253 of the Act.

The following diagram explains the process of raising an objection/ filing an appeal:



Comparative Analysis

A comparative analysis showing some significant differences in both of these authorities has been highlighted below:

CIT(A)	DRP
<i>1. Constitution</i>	
CIT(A) is a single appellate authority which shall be responsible for adjudicating the issues put forward by the taxpayers.	DRP consists of a panel of 3 Principal CIT or CIT which are responsible to issue directions to an AO, pursuant to which the AO shall complete its assessment.
<i>2. Functions</i>	
CIT(A) is a first appellate authority where a taxpayer can file an appeal against various orders so prescribed u/s 246A	DRP is part of assessment process and is an alternative to the first appellate authority where a taxpayer can file an objection against a draft assessment order issued by an AO.
<i>3. Jurisdiction</i>	
CIT(A) has the jurisdiction to hear and adjudicate appeals against various orders including appeals, assessments, penalties, reassessment and so on made by an AO.	DRP has jurisdiction to hear objections raised by an eligible <u>assessee</u> against draft assessment order only.

<i>4. Disposal</i>	
There is no time limit for CIT(A) to dispose the appeal.	DRP is bound to adjudicate the objections within 9 months from the date of filing of objection(s).
<i>5. Appeal to ITAT</i>	
The orders passed by the CIT(A) are appealable by both AO and the <u>assessee</u> to the ITAT.	The AO <u>can not</u> file an appeal before ITAT regarding an order passed pursuant to the directions of DRP. However, an <u>assessee</u> can do so.

Advantages of DRP over CIT(A)

After the introduction of DRP, the Indian tax litigation process & the taxpayers have been substantially benefited and these benefits are enumerated as follows:

- Power to override:* DRP is a collegium of 3 CITs whereas CIT(A) is a single appellate authority handling the tax disputes. The directions of DRP hence cannot be overridden by CIT(A) u/s 263 of the Act.
- Faster Resolution:* The DRP's mechanism is quicker than the CIT(A) process because DRP is bound to serve directions to AO within 9 months of raising of an objection by a taxpayer so that the assessment can be completed on time.

3. *Pre-emptive review:* DRP allows for a pre-emptive review of draft assessment order before the final assessment order is passed by the AO. This provides a scope of addressing discrepancies early in the process of assessment.

4. *Reduced Litigation:* The involvement of DRP can potentially reduce the number of cases that proceed to higher appellate authorities or courts as by addressing disputes at an earlier stage, DRP can help in minimizing prolonged litigation, which is often time-consuming and costly for both taxpayers and the tax administration.

5. *Payment of Demand:* While appeal before CIT(A) requires payment of certain percent of the amount of tax demand, the DRP route does not have this requirement as the demand is determined based on Final assessment order after giving effects to the directions of DRP.

Conclusion

The litigation process has been expedited through the introduction of DRP which has also reduced the burden of cases from CIT(A).

The eligible taxpayers, can approach to DRP regarding TP and international matters where the redressal is faster as the DRP adjudicates objections within 9 months.

Further in cases of relief to taxpayers by DRP, the litigation comes to an end since final assessment order, passed in compliance with DRP directions, is not appealable before ITAT.

Legal Corner



In the Income Tax Appellant Tribunal

Denso(Thailand) Co Ltd. vs. ACIT International taxation ("ACIT")

Introduction & Brief Facts

Denso (Thailand) Co Ltd. ("**The appellant**") is a company incorporated under laws of Thailand. The company is engaged in providing business administration, material engineering and development services to its Indian associate enterprise ("**AE**")

During the year under consideration, the Appellant had earned INR 16,60,43,718 from services provided to its AE. The case of the appellant was selected for scrutiny and assessment u/s 143(3) of the Income Tax Act, 1961 ("**the Act**"). The assessing officer ("**AO**") determined that said receipt was covered under clause 3 of article 22 (relating to other income) of India Thailand DTAA. Further, such receipt will be taxed at the 10 percent as per section 5 read with section 9(1)(vii) of the Act. The DRP also rejected appellant's objection, consequently the final assessment order was passed by the AO.

Aggrieved & dissatisfied with the same, the appellant filed an appeal before the Honourable ITAT.

Arguments of Assessee

The Ld. Counsel submitted that the Appellant has earned 16.60 Cr from sale of service to its AE which is in nature of Fee for technical services ("**FTS**"). The appellant claimed that such receipts are non-taxable due to absence of FTS clause in India-Thailand DTAA.

Further, Ld. Counsel claimed that Income earned by the appellant is in nature of business income and is covered under Article 7 of India-Thailand DTAA. Further, due to absence of permanent establishment ("**PE**"), business income is not liable to tax.



Arguments of the Revenue

The Ld. DR accepted that the nature of services was FTS, however, due to absence of FTS clause, income would fall under article 22 (relating to other income) of India Thailand DTAA and accordingly to be taxed at 10% as per section 5 read with section 9(1)(vii) of the Act. This contention of revenue was based on the fact that income earned by the appellant was not primary business income.

Decision of Hon'ble ITAT

After carefully examining all the facts & circumstances of the case, the Hon'ble ITAT ruled in the favour of appellant. The Hon'ble ITAT held that the services provided are in nature of business income covered under Article 7 of India-Thailand DTAA but due to absence of PE the same is not liable to tax.

The Hon'ble ITAT relied on coordinate bench ruling in case of *Bharti Airtel*¹ and *GE precision Healthcare LLC*², wherein it was held that where there is no FTS clause available in the tax treaty with a country, the income in question would be assessable as business income and it can be taxed in India only if there is a PE in India.

The Hon'ble ITAT observed that revenue failed to examine business activity of the appellant and erroneously concluded that services provided by appellant are not its primary business activity. This conclusion of revenue was based on the information available on the web portal of appellant.

Comment

It has been an age-old tradition & practice to consider an income as business income if such an income is not governed by a specific clause in a tax treaty.

Further, once an income is classified as a business income, the same shall be taxed in India when there lies a PE in India and if a person does not have a PE in India, the business income of such a person shall not be liable to tax.

¹Bharti Airtel Ltd. [2016] 67 taxmann.com 223

²GE precision Healthcare LLC v. ACIT, ITA No.404/Del/2023

Glossary



Act	Income Tax Act, 1961
A.Y.	Assessment Year
AE	Associated Enterprises
ALP	Arm's Length Price
AO	Assessing Officer
APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
CSP	Captive Service Providers
CBDT	Central Board of Direct Taxes
CIT(A)	Commissioner of Income Tax (Appeals)
DRP	Dispute Resolution Panel
DGIT	Directorate General of Income Tax
DST	Digital Service Tax
FA	Finance Act
FTS	Fee for Technical Services
GMT	Global Minimum Tax
HC	High Court
ITAT	Income Tax Appellant Tribunal
IRD	Interest Rate Differential Method
ITO	Income Tax Office
JCIT	Joint Commissioner of Income Tax
MNEs	Multi-National Enterprises
MAM	Most Appropriate Method
NR	Non-Resident
OECD	Organisation for Economic Cooperation and Development
PCCIT	Principal Chief Commissioner of Income Tax

Glossary



PE	Permanent Establishment
SC	Supreme Court
SDT	Specified Domestic Transactions
TDS	Tax Deducted at Source
TP	Transfer Pricing
TNMM	Transaction net margin method
TPO	Transfer Pricing officer

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