# DESAI SAKSENA & ASSOCIATES

**31st October, 2025**

## Friday Tax Alert

**Reassessment proceeding is invalid if Assessing Officer is unsure of taxability year and search information pertains to different Financial Years.**

### FACTS OF THE CASE:

- The Assessee was the Karta of the Joint Hindu Undivided Family (HUF) engaged in the business of manufacturing and selling excisable goods. The Assessee had filed its return of income for Assessment Year 2017-18 declaring total income of Rs. 3.62 lakhs. The same was also processed under section 143(1).

- On 22-03-2021, information was received from DDIT (Inv.) that a search was carried out at the business premises of the Assessee on 05-06-2015 by the Commissioner of Excise which unearthed that the Assessee had indulged in suppression of sales of plastic material to the tune of Rs. 42.99 crores. In view of the same, the Assessing Officer issued notice under section 148 for Assessment Year 2017-18 on the ground that income had escaped assessment within the meaning of section 147.

- It was the case of the Assessee that the search by the Excise Department conducted on 05-06-2015 was for period covering financial years 2012-13, 2013-14 and 2014-15. However, the Assessing Officer had initiated reassessment proceedings in case of the Assessee for the Assessment Year 2017-18, which was much later than such period.

- Further, it was the objection of the Assessee that the reasons recorded were factually incorrect and the proceedings initiated were on the basis of factually incorrect reasons.

- The objections were not considered by the Assessing Officer and by way of order dated 28-02-2022, the objections were rejected by the Assessing Officer.

- Aggrieved by the rejection, the Assessee has filed a writ petition before the Hon'ble High Court.

### CONCLUSION:

- It is clear that while disposing of the objections made by the petitioner it has been categorically recorded by the respondent that as per the information on record, an amount of Rs. 42,991.65 lakhs has escaped assessment and, therefore, the Assessing Officer has rightly invoked the provision of section 147 and issued Notice under section 148.

- It was further noted that as per the decision of the ***Supreme Court in the case of GKN Driveshafts (India) Ltd. v. Income Tax Officer [2002] 125 Taxman 963/259 ITR 19 (SC) it was not mandatory to provide any other documents apart from the reasons recorded for re-opening.***

- However, the fact is not in dispute that the amount which is alleged to have escaped income, is based on a search which was carried out for the financial years 2012-13, 2013-14 and 2014-15 whereas the present dispute is for Assessment Year 2017-18. Considering the totality of the circumstances and the facts which have come on record, it is apparent that the respondent

is not sure as to the year of taxability and whether the said escaped income requires to be taxed in the Assessment Year 2017-18.

- In this situation, ***it is not possible to agree with the stand of the revenue that any income could have been stated to have escaped the assessment for the Assessment Year 2017-18 vis-a-vis the search carried out by the Department in relation to the Financial years 2012-13, 2013-14, 2014-15 and 2015-16 and that there was a failure or omission on the part of the Assessee due to such escape.***

- The impugned notice under section 148 dated 31-03-2021 and the impugned order dated 28-02-2022 disposing of the objection of the petitioner are hereby quashed and set-aside. The petition is allowed, accordingly.

***Dipesh Parasmal Jain HUF v. Income-tax Officer [2025] 179 taxmann.com 151(Gujarat High Court.)***

## Software Licensing not taxable as Fee for technical Services (FTS) under India – US DTAA unless the technology was "made available" to users.

**FACTS OF THE CASE:**

- The Assessee, a US-based company, focused on digital security, provided public key infrastructure and validation required for issuing digital certificates or TLS/SSL certificates which were used to verify and authenticate the identities of organizations and domains and to protect the privacy and data integrity of user's digital interactions with web browsers, email clients, documents, software programs, apps, networks and connected loT devices. The Assessee claimed that receipts earned from licensing of software through operations in India earned by the Assessee was not chargeable to tax.

- The Assessing Officer passed the draft assessment order under section 144C(1) making an addition by characterizing the receipts from licensing of the software as fee for technical services and treated it as income chargeable to tax as per India-USA DTAA.

- On appeal, the Dispute Resolution Panel (DRP) upheld the Assessing Officer's order.

- Aggrieved by the order, the Assessee's filed an appeal to the before Hon'ble Income Appellate Tribunal.

**CONCLUSION:**

- The Tribunal in Assessee's own case for the earlier Assessment year in DigiCert Inc. v. ACIT, Income Tax Officer, Circle International Taxation [IT Appeal NO. 3626 (Delhi) of 2023, dated 14-11-2024] held that ***"Article 12 of India US treaty defines fee for technical services and it insists that unless the technical services rendered result in 'making available' technological support, technology, technical plan or design etc., the said services could not be construed as fee for technical services so as to be taxable under the India US treaty.*** In the instant case, nowhere the lower authorities could bring with cogent evidence on record that the "make available clause' is duly satisfied so as to enable the end user to use the

technology on his own. Hence the said services could not be construed as FTS as per Article 12(4)(b) of India US treaty".

- Respectfully following the aforesaid decision, the Assessee was duly justified in treating the receipts of Rs. 5.89 crores as exempt from tax both under the Act as well as under the Treaty in the facts and circumstances of the instant case.

***[DigiCert Inc v. ACIT, Int. Taxation [2025] 179 taxmann.com 284 (Delhi - Trib.)]***

# Desai Saksena & Associates

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