

Notifications

Additional conditions for mandatory furnishing of IT return by persons other than a company or a Firm

[Notification No. 37/2022 dated 21st April 2022](#)

A person other than a company or a firm (including LLP) is generally required to file the return of income only if the total income exceeds the maximum amount not chargeable to tax. However, if he fulfills certain conditions such as incurring of foreign travel expenses, electricity consumption expenses, deposits, etc. exceeding certain threshold, the person is mandatorily required to file the return even if his total income does not exceed the maximum amount not chargeable to tax. Now, new additional conditions have been notified for mandatory filing of the return. Accordingly, if a person other than a company or a firm fulfills any one of the conditions provided below then the filing of the income tax return shall be mandatory for the concerned year:-

- 1) if the total sales/ turnover or gross receipts, in the business exceeds Rs. 60 lakh during the previous year (PY) ; or

- 2) if the total gross receipts in profession exceed Rs. 10 lakh during the PY; or
- 3) if the aggregate of TDS and TCS during the PY, in the case of such person, is Rs. 25,000 or more (Rs. 50,000 for resident individual of age 60 yrs. or more); or
- 4) the aggregate amount of deposits in one or more savings bank account of the person, is Rs. 50 lakh or more during the PY.

New form notified for filing updated return

[Notification No. 48/2022 dated 29th April 2022](#)

The Finance Act, 2022 introduced new provisions for filing an updated return, within 24 months from the end of the relevant assessment year (AY) if a person has omitted to file the return or noticed errors in the return filed earlier. In this regard, the Form ITR-U has been introduced for filing this updated income tax return from AY 2020-21

The new form seeks information on reasons for updating the return from the following list of reasons –

- Return previously not filed

- Income not reported correctly
- Wrong heads of income chosen
- Reduction of carried forward loss
- Reduction of unabsorbed depreciation
- Reduction of tax credit u/s 115JB/115JC
- Wrong rate of tax
- Others

Updated return filed will be considered as defective return unless such return is accompanied by the proof of payment of tax as required under section 140B.

Presently, e-filing functionality has been enabled to file updated ITR under section 139(8A) for AY 2020-21 and AY 2021-22, for ITR 1 and 4 only.

Cost Inflation Index (CII) notified for FY 2022-23

[Notification No. 62/2022 dated 14th June 2022](#)

The CII, which is used to compute the indexed cost of acquisition for the purpose of capital gains, has been notified for FY 2022-23 as 331. The CII for last financial year (FY), i.e., FY 2021-22 was 317.

Exclusions notified from the definition of Virtual Digital Assets (VDA)

[Notification No. 74/2022 dated 30th June 2022](#)

The Finance Act, 2022 introduced taxing mechanism for income from transfer of VDA. Given the wide definition of VDA, there were concerns that these assets acquired in the course of regular transactions could be subject to tax as they could be treated as VDA. The following assets have been notified as excluded from the definition of the term 'VDA' -

- 1) Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;
- 2) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;

- 3) Subscription to websites or platforms or application.

Judicial Decisions

No disallowance under section 14A if no tax-free income in the relevant year

Asst CIT vs. Bajaj Capital Ventures (P.) Ltd

Relevant facts

The assessee did not earn any exempt income during the relevant PY. However, the Assessing Officer (AO) disallowed expenses under section 14A of the Act read with Rule 8D of the Rules.

Held

The Tribunal following the decision of the Special Bench of the Delhi High Court, held that in the absence of any exempt income earned during the year, there would be no disallowance of expenses under section 14A.

CNK Comments

The Mumbai ITAT has relied on the decision of the Special Bench of the Delhi High Court. However, no reference is made in the decision to the recent amendment vide Finance Act, 2022 which seeks to clarify that the disallowance under section 14A shall be made even in case there is no tax-free income earned during the relevant year. Further, recently the Guwahati ITAT has held this amendment to be retrospective in nature (even though Memorandum states it is applicable from 1st April 2022).

Notional Interest on loans advanced to sister company by assessee cannot be added to its Income and charged to tax.

Ranjani Enterprise Ltd. Vs Income Tax Officer

Relevant Facts

The assessee did not charge interest on loan advanced to its sister concern due to financial difficulties faced by the sister concern (borrower company).

During the assessment proceedings, it was found that the interest-bearing funds borrowed from shareholders were utilized to make interest-free advances and therefore AO proceeded to compute notional interest of 18% on outstanding loans.

The addition was sustained by the CIT(A) considering it to be part of group's tax planning as the assessee was claiming deduction for the interest paid on its borrowings but not charging interest on the loans advanced by it to sister concern.

Held

The tribunal held that the addition of notional interest is not sustainable, as only real income is to be assessed to tax unless expressly provided under the Act.

The ITAT also held that being a sister concern, the assessee had business interest in the borrower entity and therefore, non-charging of interest was fully justified by the assessee and the same could be said to have been out of commercial expediency.

Capital gains to be computed after reducing proportionate amount withdrawn from escrow account from the full value of the consideration

Dinesh Vazirani Vs. The Principal Commissioner of Income Tax

Relevant Facts

Promoters entered into Share Subscription and Purchase Agreement (SPA) to transfer their stake in equity share capital of the company to the purchasers, upon satisfaction of certain conditions mentioned in the SPA. SPA provided

that out of the sale consideration, a certain amount would be kept in escrow account to be released to the seller promoters only on fulfilling certain obligations. As certain obligations were not fulfilled, part of the amount in escrow was not

received by the promoters subsequently. While the entire amount of consideration was offered to tax in the return of income of the assessee promoter, an application under section 264 was filed for claiming the reduction in the sales consideration to the extent not subsequently received by the assessee.

Held

The ITAT held that the full value of consideration for computing capital gains, will be the amount which was ultimately received by the promoters after the adjustments on account of the liabilities from the escrow account. The ITAT further held that income or gain is chargeable to tax under the Act based on the real income earned by an assessee and in the present case, the real income (capital gain) can be computed only by considering the sale consideration after reducing the amount withdrawn from the escrow account (and not received by the sellers). Accordingly, the ITAT directed the AO to pass the assessment order considering only the net amount received by the assessee as the sales consideration.

CNK Comments

This is a welcome decision by the ITAT and one may also consider applying the principles in situations where there is a deferred consideration which is subsequently reduced due to certain conditions, etc.

KEY TAKE AWAY

- It is mandatory to file ITR if a person other than a company/firm fulfills any of the conditions specified in Rule 12AB, even if income for concerned year does not exceed the basic exemption limit.
- Updated return can be filed for AY 2020-21 onwards, in form 'ITR-U' if a person has omitted to file the return or notices errors in the return filed earlier.
- Cost Inflation Index of '331' is notified for FY 2022-23.
- Gift card, vouchers, reward / loyalty points, subscriptions to websites / applications is explicitly excluded from the definition of Virtual Digital Asset.
- Income is chargeable to tax under the Act based on the real income earned by an assessee. Therefore, money withdrawn from escrow account or notional interest on loan advanced, can not be charged to tax.



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CNK
& ASSOCIATES LLP

MUMBAI

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai. 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road,
Vile Parle (East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Bengaluru: +91 80 2535 1353

Ahmedabad: +91 79 2630 6530

Pune: +91 020 2998 0865

Chennai: +91 44 3500 3458

GIFT City: +91 79 2630 6530

Dubai: +971 4 3559533

Vadodara: +91 265 234 3483

Delhi: +91 11 2735 7350