JMP Advisors®

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TAX MATTERS

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DID YOU KNOW?

The Income-tax department will now display foreign financial information received through international information sharing framework in the taxpayers' Annual Information Statement. This will improve transparency, help taxpayers to verify overseas income and assets reported in their tax returns and enable easier reconciliation.

A collaborating firm of Andersen Global

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 July 2026:

- **Ancillary hospitality and entertainment services do not alter the character of Passenger Carriage**

  - DCIT (International Taxation) vs M/s Star Cruises (India) P. Ltd.[1]

A foreign shipping enterprise operated cruise services in India through its Indian agent. The taxpayer was responsible for conducting cruise operations in India and collecting revenue from the sale of cruise packages and shore excursions. The taxpayer contended that the income of the foreign enterprise was taxable under the presumptive taxation at 7.5% of specified gross receipts earned from the business of operating ship.

The taxpayer accordingly, sought deduction of tax at source by applying the presumptive income mechanism. The dispute arose because the cruises commenced and concluded at Mumbai, while providing passengers with various hospitality and entertainment facilities during the voyage. The tax officer argued that the activity was primarily one of tourism, leisure and entertainment rather than carriage of passengers.

On this basis, the tax officer rejected the application and estimated the taxable income at 25% of the cruise fare receipts instead of the presumptive rate of 7.5%.

The Commissioner of Income Tax (Appeals) (‘CIT(A)’) held that the foreign enterprise was engaged in the business of operating ships and satisfied the conditions prescribed under the provisions of presumptive taxation.

The Revenue challenged the matter before the Tribunal, which dismissed the Revenue’s appeal and upheld the applicability of provisions of presumptive taxation. The Mumbai Income Tax Appellate Tribunal (‘Tribunal’) observed that a round-trip voyage constituted two separate acts of carriage and that passengers could disembark at intermediate ports without being compelled to return to Mumbai.

The Tribunal further noted that the primary charges collected from passengers related to cabin and transport fares and that any entertainment provided on board, whether included in the fare or separately paid for, was merely incidental to the principal business of operating ships. The Tribunal also relied upon CBDT Circulars[2] supporting the application of presumptive taxation to foreign shipping enterprises. The Bombay High Court (‘HC’) subsequently dismissed the Revenue’s appeals, leading to the present appeals before the Supreme Court (‘SC’).

The SC dismissed the Revenue's appeals and upheld the decision of the HC. The SC observed that the tax officer had adopted an unduly narrow and restrictive interpretation of the expression ‘carriage’.

The SC noted the following points:

- The tax officer incorrectly assumed that carriage exists only when passengers are transported from Port A to Port B.
- The possibility of passengers disembarking at intermediate ports had been ignored by the tax officer.

[1] TS-1155-SC-2026

[2] CBDT Circular Nos. 763 dated 18 February 1996 and 169 dated 23 June 1975

- The provision of hospitality, recreation and entertainment during a voyage does not alter the essential character of the activity as carriage of passengers.
- Ancillary services cannot be treated as the dominant purpose of the voyage so as to deny the benefit of provisions of presumptive taxation.
- The findings of the CIT(A) and Tribunal were findings of fact and were neither perverse nor contrary to law.

Accordingly, the SC held that the foreign enterprise was engaged in the business of operating ships and that its income was correctly taxable on a presumptive basis at 7.5% of the gross receipts.

JMP Insights – *The ruling clarifies that ancillary hospitality and entertainment services do not, by themselves, alter the character of cruise operations as passenger carriage under provisions of presumptive taxation. The SC emphasised that such services must be viewed in the context of the overall business and cannot override its principal character. The SC also rejected a restrictive interpretation confining 'carriage' to movement from one port to another and upheld the application of presumptive taxation of cruise income at 7.5% of the relevant gross receipts.*

- **Tax Officer cannot challenge regulatory position accepted by IRDAI**

- ACIT vs SBI General Insurance Company Limited[3]

The taxpayer, a general insurance company ceded reinsurance premium to reinsures outside India during the relevant year. During the reassessment proceedings, the tax officer observed that the company's reinsurance placement with a foreign reinsurer exceeded the limit prescribed under the Insurance Regulatory and Development Authority (General Insurance - Reinsurance) Regulations, 2000. Under the Regulations, placement with any one foreign reinsurer was restricted to 10 percent of the total reinsurance premium ceded outside India, unless prior approval of the Insurance Regulatory and Development Authority of India ('IRDAI') was obtained.

The taxpayer submitted that the reinsurance programme had been duly disclosed to the IRDAI and that the IRDAI had no objection to the arrangement. Since the tax officer was not satisfied with the explanation, he sought information directly from the IRDAI under section 133(6) of the Income-tax Act, 1961 ('the Act'). In response, the IRDAI clarified that the taxpayer had approached regarding the reinsurance arrangement and that the IRDAI had no objection to the placement exceeding the prescribed threshold.

The tax officer, however, held that the absence of an objection could not be equated with the formal approval contemplated under the Regulations. Accordingly, he disallowed the excess reinsurance premium. The CIT(A) after considering the correspondence between the taxpayer and the IRDAI as well as the clarification furnished directly by the regulator, deleted the disallowance. Aggrieved by the relief granted by the CIT(A), the Revenue filed an appeal before the Mumbai Tribunal.

The Tribunal noted that the taxation of insurance companies is governed by the special provisions contained in section 44 of the Act and the First Schedule thereto. It observed that the tax officer cannot disregard the regulatory framework unless a specific

[3] ITA Nos. 7083 to 7085/MUM/2025

regulatory violation with corresponding tax implications is established.

The Tribunal noted that the disallowance proceeded on the assumption that the taxpayer had failed to obtain the approval contemplated under the regulations. However, the documentary record, including the clarification furnished directly by the IRDAI to the tax officer, indicated that the IRDAI had examined the reinsurance arrangement and had not considered it to be in breach of the applicable regulations. The Tribunal observed that once the competent regulatory authority had accepted the taxpayer's explanation and permitted the arrangement to continue, it was not open to the tax officer to arrive at a contrary regulatory conclusion solely on the basis of his own reading of the provisions.

The Tribunal further observed that regulatory compliance for insurance sector is primarily within the domain of the IRDAI. The Tribunal also noted that the substance of the IRDAI's communication must prevail over its form and that tax authorities should not adopt an unduly literal approach while evaluating such correspondence.

Accordingly, the Tribunal upheld the order of the CIT(A) and deleted the disallowance, holding that in the absence of any finding by the IRDAI that the taxpayer had violated the reinsurance regulations, there was no basis for the tax officer to treat the arrangement as non-compliant and deny the deduction claimed by the taxpayer.

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***JMP Insights** – The ruling highlights the limits of the tax officer's right to re-characterise or question positions that fall within the regulatory oversight of specialised sectoral regulators. While tax consequences may flow from a regulatory breach, the existence of such a breach cannot ordinarily be inferred by the tax authorities where the regulator itself has examined the matter and raised no objection.*

- **Deductibility of expatriate employment costs in computing profits of an Indian PE**

  - DCIT (International Taxation) vs Standard Chartered Bank[4]

The taxpayer is a foreign banking company carrying on banking operations in India through its Indian branches, which constituted a Permanent Establishment ('PE') in India.

During the relevant year, the taxpayer claimed a deduction towards salaries paid to expatriate employees deputed by the Head Office ('HO') to work exclusively for the Indian branch operations. These employees were deputed for a tenure of two to three years, heading various functional divisions and managing local business operations in India. A portion of their salary and allowances was disbursed outside India by the HO in foreign currency for administrative convenience, while the remaining portion was paid in India. The Indian branch subsequently reimbursed the overseas salary component to the HO.

During the assessment proceedings, the tax officer disallowed the deduction pertaining to the salary portion paid outside India. The tax officer held that the payment constituted executive and general administrative expenditure in the nature of HO expenditure and was consequently subjected to the

[4] 1 ITA 4247 & 4275/MUM/2025 (Mumbai ITAT)
- While the Tribunal's order covers multiple cross-appeals and grounds raised by both the Revenue and the taxpayer, this write-up selectively examines the core issues concerning section 44C limits, direct business expense allowability and withholding tax obligations.

restrictive caps prescribed under section 44C of the Act. The tax officer further asserted that the expenditure was not allowable under section 37(1) of the Act as it was not incurred for the purpose of the business of the Indian operations.

On appeal, the CIT(A) followed the orders of the Mumbai Tribunal rendered in the taxpayer's own case for preceding assessment years and deleted the disallowance. Aggrieved by the relief granted by the CIT(A), the Revenue filed an appeal before the Tribunal.

The tax officer contended that the expatriate salary component was paid outside India by the overseas HO and thus fell within the definition of 'HO expenditure'.

The taxpayer argued that section 44C of the Act applies exclusively to common executive and general administrative overheads incurred outside India for managing offices abroad or shared across multiple global units requiring allocation. It was submitted that the expatriate personnel were seconded exclusively to the Indian branch, worked under the supervision and control of the Indian operations and rendered services solely for the Indian business. As such, the expenditure had a direct nexus with business operations in India.

Additionally, the taxpayer contended that under Article 7 of the India-UK DTAA, all expenses incurred for the purposes of the PE are allowable while computing profits attributable to the PE. Since the salary expenditure related entirely to the Indian PE, it had to be allowed under the DTAA.

The Tribunal observed that the applicability of section 44C of the Act depends on the real nature and character of the expenditure rather than the location or mode of payment. Section 44C of the Act covers common head office administrative overheads incurred outside India for managing foreign offices or requiring apportionment. In the present case, the expatriate employees rendered services exclusively for the Indian branch, making the expenditure directly connected with the business operations carried on in India. Consequently, it could not be characterized as 'HO expenditure' under section 44C of the Act merely because a part of the salary was initially disbursed outside India by the HO.

Since the expenditure was incurred wholly and exclusively for carrying on business in India, the Tribunal held that it was allowable as a business deduction under section 37(1) of the Act.

Examining the treaty framework, the Mumbai Tribunal held that under Article 7 of the India-UK DTAA, expenses incurred wholly for the purposes of the Indian PE are fully allowable while computing profits attributable to the PE.

Accordingly, the Tribunal dismissed the Revenue's appeal and held that section 44C of the Act is not applicable to expatriate salary reimbursements incurred exclusively for Indian business operations, confirming their allowability under section 37(1) of the Act and Article 7 of the India-UK DTAA.

JMP Insights - *This ruling reconfirms that section 44C of the Act is restricted to common head office administrative overheads requiring allocation and cannot be used to cap expenses directly incurred for Indian business operations. The Tribunal's finding underscores that the determining factor is the nature and purpose of the expenditure, and not the fact that the salary was initially paid by the foreign HO.*

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- **Capital Gains exemption to be examined based on each capital asset and not on an aggregate basis**

  - Pavan Kumar Agarwal vs DCIT[5]

The taxpayer earned long-term capital gains arising from the sale of 17 flats. The entire capital gains were reinvested in the construction of a residential house and the purchase of four residential flats. Accordingly, exemption was claimed in the Return of Income ('ROI').

The tax officer restricted the exemption to one residential property and disallowed the balance claim, treating the same as taxable long-term capital gains. The tax officer interpreted the relevant provisions to permit exemption in respect of only one residential property, with an additional property being eligible only where the capital gains do not exceed INR 20 million (~ USD 0.2 miilion).

The CIT(A) upheld the action of the tax officer and denied the exemption in respect of more than one residential property. Aggrieved by the order of the CIT(A), the taxpayer filed an appeal before the Bangalore Tribunal.

Based on the facts available on the case, the Tribunal made the following observations:

i. Capital gains to be computed for each capital asset separately

The Tribunal examined the provisions of the Act and observed that tax is levied on profits or gains arising from transfer of a capital asset. The Tribunal relied on the judgement of Special bench in the case of Montgomery Emerging Markets Fund[6] wherein it was held that each long-term capital asset transferred represents an independent source for capital gains computation.

ii. Exemption to be applied asset-wise

The Tribunal stated that provisions for exemption should be interpreted on the same lines as the charging section. Accordingly, exemption should be allowed in respect of capital gain arising from transfer of each and every long-term capital asset being a residential house.

The Tribunal further noted that the provision of extending exemption nowhere provides for clubbing capital gains from several residential houses and then granting a single exemption.

iii. No restriction on sale of one residential property

The Tribunal referred to the Mumbai Bench decision in Rajesh Keshav Pillai7, which held that the language in section 54 of the Act does not restrict exemption only to the sale of one residential house.

The Tribunal referred to CBDT Letter dated 25 March 1977, which clarified that where more than one residential house is sold, capital gains arising from transfer of each house would qualify for exemption.

iv. Interpretation of 2014 amendment

The Tribunal analysed the amendment made by the Finance (No. 2) Act, 2014 replacing 'a residential house' with 'one residential house in India'. It observed that the Memorandum explaining the Finance Bill merely stated that rollover relief would be available where investment is made in one residential house in India and does not state that where multiple residential houses are sold, exemption can be claimed only once.

[5] ITA No.1916/Bang/2025
[6] [2006] 100 ITD 217
[7] [2011] 7 taxmann.com 11

On the basis of the above observations, the Tribunal ruled in favour of the taxpayer and allowed the entire capital gains as exempt under the Act.

***JMP Insights** – The decision is particularly beneficial for real estate investors holding multiple residential units. It provides judicial support against the Revenue's view that post-2014, section 54 of the Act relief is restricted to only one residential house irrespective of the number of houses sold.*

However, the Tribunal also laid down an important limitation that the number of new residential houses for which exemption is claimed should not exceed the number of residential houses transferred.

- **Public Charitable Trust Cannot Be taxed at the Maximum Marginal Rate solely on account of beneficiary interests being indeterminate**

  - Sri Anjaneya Samudaya Bhavan Trust vs Income Tax Officer[8]

The taxpayer is a public charitable trust established in Davanagere, Karnataka for developing and maintaining a community hall for public functions and carrying out charitable activities without any profit motive. The taxpayer is not registered under sections 12AA/12AB of the Act and consequently does not claim exemption under sections 11 to 13 of the Act. The taxpayer offered its surplus income to tax under the normal provisions of the Act.

The Central Processing Centre ('CPC') while processing the return subjected the taxpayer's income to tax at the Maximum Marginal Rate ('MMR'). The taxpayer filed a rectification application contending that its income ought to have been taxed at the normal rates applicable to an Association of Persons ('AOP'). The rectification application was rejected.

Before the CIT(A), the taxpayer argued that it functioned as a public charitable trust and not as a discretionary trust. Therefore, its income could not be subjected to MMR merely because beneficiary shares were indeterminate. The CIT(A), however, upheld the CPC's action by mandating tax at MMR according to section 164(1) of the Act.

Aggrieved by the order of the CIT(A), the taxpayer filed an appeal before the Bangalore Tribunal.

Before the Tribunal, the taxpayer reiterated that no trustee was entitled to receive any share in the income of the trust and the entire income was exclusively applied towards its charitable objects.

The Revenue argued that since the taxpayer was not registered under section 12AB of the Act and the beneficiaries' shares were indeterminate, section 164(1) of the Act had been rightly invoked and tax was correctly levied at the MMR.

The Tribunal held that section 164 of the Act was enacted primarily to prevent tax avoidance through discretionary private trusts where beneficiaries enjoy trust income despite their respective shares being indeterminate. Such provisions cannot be mechanically extended to public charitable trusts merely because there are no determinate shares of beneficiaries. The Tribunal relied upon a 1982 CBDT Circular[9] which expressly clarifies that charitable or religious trusts, where members or trustees are not entitled to any share in the income, are taxable at the normal rates applicable to an AOP and not at the MMR.

Accordingly, the Tribunal set aside the order of the CIT(A) and directed the tax officer/CPC to

[8] [TS-992-ITAT-2026(Bang)]

[9] CBDT Circular No. 320 dated 11 January 1982

recompute the taxpayer's tax liability by applying the normal rates applicable to an AOP instead of the Maximum Marginal Rate. The appeal was allowed.

JMP Insights – *The ruling provides clarity on the distinction between discretionary private trusts and public charitable trusts for the purposes of section 164 of the Act. The Tribunal has reaffirmed that the absence of determinate beneficiary shares, by itself, does not justify taxation at the Maximum Marginal Rate where the trust is constituted exclusively for charitable purposes and no trustee has any entitlement to its income.*

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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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Jairaj Purandare, the Founder Chairman has over four decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. Jairaj was Regional Managing Partner, Chairman - Tax and Country Leader - Markets & Industries of PricewaterhouseCoopers India. Earlier, Jairaj was Chairman of Ernst & Young India and Country Head of the Tax & Business Advisory practice of Andersen India.

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