

Lexygen India Digest

November 2025

The November 2025 issue of Lexygen India Digest reports a decision by the Supreme Court of India clarifying that a temporary lull in business does not amount to its cessation and that the taxpayer is allowed to set off business expenses and unabsorbed depreciation against any interest income earned during such lull. The case updates section also reports a decision of the Delhi Bench of the Income Tax Appellate Tribunal ruling that a separate notification published in the official gazette is required to incorporate the multilateral instrument which will validate the amendments in the Double Taxation Avoidance Agreement entered into between India and Ireland. The market updates section of this issue reports some significant private equity deals in the finance, healthcare, technology, digital media, logistics, cybersecurity, e-commerce, manufacturing, and software sectors; fundraising by Indian private equity and venture capital funds; mergers and acquisitions in the pharmaceuticals, healthcare, manufacturing and renewable energy sectors; and certain other important deals.

REGULATORY UPDATES

A. CASE UPDATES

SC: Temporary lull in business does not amount to cessation, and a non-resident taxpayer is entitled to deduct expenses and set off unabsorbed depreciation against interest income earned during such period of lull.

In a significant decision in *Pride Foramer S.A. vs. Commissioner of Income Tax & Another*, the Supreme Court of India (“SC”) has held that a temporary lull in business activity of a non-resident taxpayer does not amount to cessation of business, and that interest income earned on tax refunds is taxable under the head ‘income from other sources’, allowing deduction of expenses and set-off of unabsorbed depreciation against interest income earned during the period of lull under Income Tax Act, 1961 (“IT Act”).

To briefly summarise the facts of the case, Pride Foramer S.A. (“PF”) is a company incorporated in France, which executed an oil drilling contract for an Indian company, Oil and Natural Gas Company Limited (“ONGC”), from 1983 to 1993. Subsequently, another drilling contract was awarded in the year 1998

and formalised in 1999. During the intervening years between 1993 to 1999, PF was not awarded any contract. However, it maintained continuous business correspondence with ONGC offering manpower services for deep water drilling and submitted a bid for oil exploration in 1996, which was unsuccessful. PF did not generate any active business income in India during this period but received interest on income tax refunds pertaining to previous tax years. It filed income tax returns showing nil income after setting off administrative and audit expenses, along with unabsorbed depreciation on furniture and fixtures carried forward from prior years against the interest income by treating the interest as business income. In the course of assessment, the Assessment Officer (“AO”) disallowed such deductions and setting off of unabsorbed depreciation. This decision was upheld by the Commissioner of Income Tax (“CIT”), citing that no business was carried on and no permanent establishment (“PE”) existed in India during the intervening years hence there can be no business income.

On appeal by PF, the Income Tax Appellate

Tribunal (“ITAT”) held that a temporary lull in business cannot be seen as cessation of business. Further, the ITAT stated that the absence of PE in India does not conclude that PF is not conducting business in India, and held that the income from interest on tax refunds is taxable under the head ‘income from other sources’ and allowed such set-off and deductions. On further appeal by the CIT, the Uttarakhand High Court (“HC”) reversed the ITAT’s decision and denied set off and deductions on the grounds that without a PE or ongoing contracts during the said period, it cannot be considered to be carrying business operations in India and therefore cannot avail deduction of current year’s business loss and set off unabsorbed depreciation under Section 71 of the IT Act. However, the HC concurred that a temporary lull in business does not amount to cessation of business.

On further appeal, the SC decided on the following issue:

- Whether PF can be said to be carrying on business during the intervening period so as to avail deduction of business