

## Appendix 29

**Chapter 3**  
**Some aspects of non-resident taxation with reference to double taxation avoidance agreements**

(Rs. in crore)

Sl. No.	Name of the assessee and charge	Astt Year & nature of assessment	Gist of observation	Tax Effect
<b>Incorrect levy of tax on royalty income/fees from technical services (Para 3.11.5)</b>				
1	M/s. Mazagaon Dock Ltd. as agent of Sudmash Russia DIT(IT) Mumbai	1998-99 Scrutiny	Technical fee was incorrectly taken at Rs.45.33 lakh instead of Rs.148.38 lakh as shown in TDS certificate.	0.67
2	M/s Adem Opel AG Germany DIT(IT) Mumbai	1999-00 to 2003-04 Scrutiny and Summary	-do-	0.31
3	M/s. Castrol Limited, U.K. DIT(IT) Mumbai	2001-02 Scrutiny	-do-	0.31
4	M/s. Drover International Belgium DIT(IT) Mumbai	2001-02 Scrutiny	Royalty was not taxed on gross basis.	0.22
5	M/s. Aditya Vikram Global Trading House Mauritius DIT(IT) Mumbai	2001-02 Scrutiny	-do-	0.18
6	M/s Unilever PLC DIT(IT) Mumbai	1996-97 Scrutiny	Tax was not levied on the gross interest receipt of Rs.1224.51 lakh.	0.14
7	M/s. Ciba Speciality Chemical Inc. Basle DIT(IT) Mumbai	2001-02 Scrutiny	Royalty of Rs.240.10 lakh received in November 1997 was offered to tax in assessment year 2001-02. This postponement resulted in loss of revenue, as reduced rate of 15% was levied instead of 20% applicable during the year when this income arose as per Indo-Swiss treaty	0.12
<b>Incorrect application of MAT (Para 3.11.8)</b>				
8	M/s. Larsen & Toubro Ltd. DIT(IT) Mumbai	1997-98 Scrutiny	DTAA relief of Rs.67.18 lakh was allowed from tax computed on income under section 115JA, which was not in order. Refund worked out to more than 10% of assessed tax and interest on refund was also incorrectly allowed	2.82
9	M/s. Hollandsche Aanneming Maatschappij BV (HAM) DIT(IT) Mumbai	1999-00 Scrutiny	Interest for defaults in payment of advance tax u/s 234B and for deferment of advance tax u/s 234C was allowed after considering MAT credit, which was not in order. This resulted in short levy of interest.	2.50
10	M/s. J P Morgan Chase Bank as successor of the Morgan Guarantee Trust of	2000-01 Summary	Provisions of section 115JA were not invoked and income was incorrectly computed at Rs.159.58 lakh under	0.09

	New York DIT(IT) Mumbai		normal provisions as per revised return instead of Rs.174.54 lakh under special provisions resulting in underassessment of income of Rs.14.96 lakh.	
11	M/s. Tecnimont SPA India Project DIT(IT) Mumbai	2003-04 Summary	Book profit under section 115JB was computed at 'nil' after allowing brought forward depreciation and business loss instead of allowing the lower of the two from the net profit of Rs.103.14 lakh. The resultant understatement of book profit was Rs.102.12 lakh	0.08
<b>Incorrect computation of income (Para 3.11.9)</b>				
12	Ballast HAM Dredging DIT(IT) Mumbai,	2001-02 Scrutiny)	Assessing officer disallowed hire rentals in respect of the vessel 'Sagar Manthan' paid to the Dutch principals as the same was inflated and was not made on the basis of arms length. However disallowance in respect of two other vessels, 'HAM 219' & 'HAM 309' having similar features and similar conditions was not made resulting in underassessment of income of Rs.11.21 crore	5.38
13	M/s. Boskalis International-Dredging International DIT(IT) Mumbai	2003-04 Summary	Credit for TDS of Rs.126 lakh was availed, whereas the related contract revenue was not offered to tax	1.26
14	Airline Rotables Ltd. (U.K.) DIT(IT) Mumbai	2000-01 Scrutiny	Taxable profits were calculated at 7.67% of gross receipts instead of 15% as discussed in the assessment order. This resulted in underassessment of income of Rs.263.09 lakh.	1.26
15	M/s. Haskoning Royal Dutch Consulting Engineers & Architects DIT(IT) Chennai,	1998-99 1999-00 Summary	Fee for technical services relatable to PE was not treated as business income	1.10
16	M/s Yamazen Corporation DIT(IT) Chennai	2000-01 to 2003-04 Summary and Scrutiny	Reimbursement of actual expenses incurred by assessee and reimbursed by their principals was not offered for taxation	0.94
17	C. Rajendran DIT (IT), Chennai	2000-01 Summary	Foreign currency income claimed irregularly as exempt.	0.91
18	M/s. American Express Bank DIT(IT) Mumbai,	1998-99 Scrutiny	Income of Rs.1.01 crore arising from sale of shares, which was held as 'stock in trade', was incorrectly taxed as long-term capital gain instead of business income.	0.89
19	M/s. Asia Today DIT(IT) Mumbai	2001-02 Scrutiny)	Assessee did not offer Rs.533.10 lakh being subscription revenues from April to June 2000, to tax.	0.80

20	M/s. International Nederlanden Bank, NV DIT(IT) Mumbai,	1997-98 Scrutiny	While setting of brought forward business loss of assessment year 1996-97 from the business income of assessment year 1997-98, loss of Rs.32.30 lakh under the head "capital gains" was incorrectly allowed in contravention of the provisions	0.38
21	Heat and Control Pty Limited DIT(IT) Chennai	1999-2000 to 2001-02 Summary and Scrutiny	Reimbursement of actual expenses incurred by assessee and reimbursed by their principals was not offered for taxation	0.31
22	M/s Royal Jordanian Airlines DIT(IT) Delhi	2000-01 Scrutiny	Interest on income tax refund not offered to tax.	0.15
23	M/s Foster Wheeler Pyro Power Inc DIT(IT) Chennai	1998-99 to 2000-01 Scrutiny and Summary	Reimbursement of actual expenses incurred by assessee and reimbursed by their principals was not offered for taxation	0.08
24	M/s Siemens Information and Communication Networks DIT(IT) Delhi	1999-00 Scrutiny	Revenue earned by assessee from imparting training at its facilities outside India was not offered to tax.	0.08
<b>Mistakes in allowing credit for taxes paid abroad (Para 3.11.17)</b>				
25	M/s Satyam Computer Services Company Ltd Hyderabad	1999-2000	Credit allowable on tax paid in USA worked out to Rs.2.24 crore (i.e. tax paid during last three quarters of calendar year 1998 and first part of calendar year 1999) as per procedure followed by the assessing officer during earlier and subsequent years as against Rs.2.48 crore allowed.	0.23
26	M/s Fichthner Consulting Equipment (I) Pvt Ltd Chennai I	2000-01 Summary	Refund was granted though tax was deducted in Japan	0.23
27	M/s Sri Lankan Airlines DIT(IT) Chennai	2000-01 Summary	Credits were afforded by the assessing officer though corresponding income was taxable only in Sri Lanka	0.02
<b>Excess allowance of deduction in respect of head office expenditure (Para 3.13.1)</b>				
28	M/s. Bank of Tokyo Mitsubishi Ltd. DIT(IT) Mumbai,	2001-02 Scrutiny	Deduction of head office expenses was allowed twice resulting in under-assessment of income of Rs.355.14 lakh.	2.46
29	City Bank NA DIT(IT) Mumbai,	2001-02 Scrutiny	Deduction u/s 44C for Head office expenses was allowed at Rs.3432.54 lakh instead of Rs.2990.63 lakh actually debited to the profit and loss account resulting in underassessment of income of Rs.441.91 lakh.	2.12
30	M/s. American Express Bank DIT(IT) Mumbai,	1999-00 Scrutiny	While rectifying the scrutiny assessment, though total income was reduced, deduction of head office expenditure was not proportionately reduced resulting in under assessment of income of Rs.224.47 lakh.	1.61

31	M/s. State Bank of Mauritius DIT(IT) Mumbai,	2003-04 Summary	The assessee's claim for deduction of Head office expenditure of Rs.122.24 lakh was allowed without restricting the same to Rs.78.77 lakh being 5% of total income resulting in underassessment of income of Rs.43.47 lakh.	0.18
<b>Incorrect allowance of deduction in respect of bad and doubtful debts (Para 3.13.2)</b>				
32	The Bank of Bahrain & Kuwait B.S.C DIT(IT) Mumbai,	2001-02, Scrutiny	Deduction on account of bad debts written off was allowed without considering balance of Rs.2.24 crore in provisions for bad and doubtful debts allowed resulting in under assessment of income.	1.54
33	M/s. American Express Bank DIT(IT) Mumbai,	1999-00, Scrutiny	While rectifying the scrutiny assessment, though total income was reduced, deduction on account of provision for bad and doubtful debts was not proportionately reduced resulting in underassessment of income of Rs.1.97 crore.	1.42
34	M/s. Dresdner Bank AG DIT (IT) Mumbai	2001-02 Scrutiny	Deduction on account of bad debts written off was allowed without considering balance of Rs.1.71 crore in provisions for bad and doubtful debts resulting in over assessment of loss of similar amount.	0.81
35	M/s.Bank of Nova Scotia, DIT(IT) Mumbai,	2001-02 Scrutiny	Deduction on account of bad debts written off was allowed by considering incorrect in provision for bad and doubtful debts resulting in underassessment of Rs.48.80 lakh.	0.65
36	Oman International Bank DIT (IT) Mumbai	2000-01 Order giving effect to appellate order	While allowing deduction for bad debts as directed in the appellate order, deduction of Rs.21.86 lakh allowed in the A.Y.1998-99 was not considered thereby resulting in excess deduction of bad debts.	0.11
<b>Incorrect taxation of capital gains (Para 3.13.6)</b>				
37	M/s May and Baker Ltd DIT(IT) Mumbai	2001-02 Scrutiny	Long term capital gains of Rs 49.66 crore taxed at 10 percent instead of applicable rate of 20 percent	20.05
38	M/s Hoechst A.G. Germany DIT(IT) Mumbai	2001-02 Scrutiny	Long term capital gains of Rs 142.86 crore taxed at 10 percent instead of applicable rate of 20 percent	7.15
<b>Irregularities in deduction of TDS (Para 3.13.10)</b>				
39	M/s PT Sambar Mitra Jaya DIT(IT) Chennai	2001-02 to 2003-04 Summary	TDS affected at lower rates applicable to resident assessee's instead of rates applicable to non residents resulting in short levy of tax and interest.	22.12
40	M/s Secit SPA Societa Ecologica Italiana DIT(IT) Chennai	1998-99 to 2001-02 Summary and Scrutiny	-Do-	16.55

41	M/s Kier International Ltd. DIT(IT) Chennai	1999-00 Scrutiny	-Do-	5.90
42	M/s Equipment Consultant Inc. DIT(IT) Chennai	1997-98 to 1999-00 Scrutiny and Summary	-Do-	4.62
43	M/s Seclat SA Project Office DIT(IT) Chennai	2002-03 to 2003-04 Summary	-Do-	1.75
44	M/s Sinar Jermih SDN DIT(IT) Chennai	2002-03 to 2003-04 Summary	-Do-	0.44
45	M/s Secit SPA Societa Ecologica Italiana DIT(IT) Chennai	1998-99 to 2001-02 Summary and Scrutiny	-Do-	1.32
46	M/s Haskoning Royal Dutch Consulting Engineers & Architect DIT(IT) Chennai	2000-01 to 2001-02 Summary	-Do-	0.15
47	M/s VSL Singapore (P) Ltd. DIT(IT) Chennai	2000-01 to 2001-02 Summary	Tax not deducted at source	0.04
48	M/s Kier International Ltd. DIT(IT) Chennai	2001-02 Summary	-Do-	0.03
<b>Defaults in payment of advance tax (Para 3.13.11)</b>				
49	M/s. Master Card International Inc , DIT (IT) Delhi	1997-98 and 1998-99 Scrutiny	Interest u/s 234B on short payment of advance tax was not levied.	1.14
50	The Hong Kong & Shanghai Banking Corporation Ltd. DIT (IT) Mumbai	2000-01 Scrutiny	Interest u/s 234C on deferment of advance tax was not levied.	1.08
51	M/s. Development Bank of Singapore Ltd. DIT (IT) Mumbai	1996-97 Scrutiny	While giving effect to appellate order of January 2003, interest u/s 234 B of Rs.20.97 lakh leviable up to the date of regular assessment was not levied	0.21
52	M/s. Galileo International DIT(IT) Delhi	2000-01 Scrutiny	-Do-	0.17
53	M/s. Lufthansa German Airlines DIT(IT) Delhi	2000-01 Scrutiny	-Do-	0.11
<b>Mistakes in application of rate of tax in respect of foreign company</b>				
54	Master Card International Inc DIT(IT) Delhi	1996-97 Scrutiny)	Tax levied at the rate of 48 percent instead of applicable rate of 55 percent	2.51
55	M/s. Doosan Heavy Industries & Constructions Co. Ltd. DIT (IT) Mumbai,	2001-02 Scrutiny	Income from turnkey project approved by Central Government computed at Rs.170.24 lakh u/s 44BBB was taxed at 15% instead of applicable rate of 48%.	0.75
56	M/s. State Bank of Mauritius DIT (IT) Mumbai,	2003-04 Summary	Business income taxed at rate applicable to Indian companies (35%) instead of the rates applicable to foreign companies (42%)	0.26

57	M/s Pirelli Cavie Systemi SPA, Italy, Hyderabad charge	2001-02 Scrutiny	Business income taxed at rate applicable to Indian companies (35%) instead of rates applicable to foreign companies (42%)	0.18
58	Dayanand V. Kamath, Mrs. Narmada Kamath and. George Andrews Ernakulam & Trivandrum	1999-2000 to 2003-04 Summary	Concessional rate of tax of 20% was levied on investment income, as against normal rates of 30%.	0.18
59	M/s Honeywell International Asia Pacific Inc DIT (IT) Delhi	1996-97 Scrutiny	Business income taxed at rate applicable to Indian companies (48%) instead of rate applicable to foreign companies (55%)	0.14
60	M/s. C.T. Environment Ltd. DIT (IT) Mumbai,	2001-02 Scrutiny	Profits and gains from business were taxed at 15% instead of applicable rate of 48%	0.14
61	M/s. Foster Wheeler Energy Ltd. DIT (IT) Mumbai,	2003-04 Summary	Surcharge was levied at 2.5 % instead of applicable rate of 5%.	0.07
62	Mrs. K.Mohammed DIT (IT) Mumbai	1996-97 & 1997-98 Scrutiny {143(3) rws 147}	In the reassessments completed for both the assessment years, DTAA benefits were not allowed to the assessee. However income was taxed at reduced rate as per the treaty instead of being taxed at normal rates.	0.06
<b>Non-levy of interest for default in filing of return</b>				
63	M/s Lotus Development Asia Pacific Pvt. Ltd. DIT(IT) Delhi	1999-2000 & 2000-01 Best Judgement	Interest not levied though return of income was filed beyond due date	73.24
64	M/s. Siemens Information and Communication Network DIT(IT) Delhi	1999-00 Summary	-Do-	2.76
65	M/s. Sheraton International Inc. DIT(IT) Delhi	1995-96 1996-97 1999-00 2000-01 Summary and Scrutiny	-Do-	2.45
66	M/s. Master Card International DIT(IT) Delhi	1998-99 Summary	-Do-	2.21
67	M/s. Ericsson Radio Systems AB DIT(IT) Delhi	1999-00 Summary	-Do-	1.83
68	M/s. Visa Services International Association DIT(IT) Delhi	1995-96 Summary	-Do-	1.12
69	M/s. Shin Satellite Public Co. Ltd. DIT(IT) Delhi	1998-99 1999-00 2001-02 Summary and Scrutiny	-Do-	0.95
70	M/s. Lucent Technologies International Inc. DIT(IT) Delhi	2000-01 Summary	-Do-	0.40

71	M/s. Sabre Inc. DIT(IT) Delhi	2000-01 Scrutiny	-Do-	0.39
72	M/s. United Airlines Inc. DIT(IT) Delhi	1999-00 2000-01 Summary	-Do-	0.38
73	M/s. GraceMac Corporation DIT(IT) Delhi	2001-02 Summary	-Do-	0.28
<b>Incorrect application of exchange rates</b>				
74	Lotus Development Asia Pacific Pvt. Ltd. DIT(IT) Delhi	1999-2000 & 2000-01 Best Judgement	Application of incorrect exchange rate and mistake in totaling.	12.59
75	Lucent Technologies International Inc. DIT(IT) Delhi	2000-01 Scrutiny	Application of incorrect exchange rate while computing taxable income.	3.04
76	Nokia Corporation DIT(IT) Delhi	2000-01 Scrutiny	Application of incorrect exchange rate while computing taxable income.	0.84

### Appendix 30

#### Mistakes in taxation of maritime business of non-residents (Para 3.12)

Rs in lakh

Sl No	Charge	No of cases	Nature of mistake	Tax effect
1	Kakinada and Vishakapatnam, Andhra Pradesh	11	Relief under Indo-Greece DTAA was erroneously allowed at the time of issue of NOC though the same was to be allowed only when assessee claimed in regular assessments under 172(7) of the Act.	23.66
2	Bhavnagar, Gujarat	20	Assessee were denied the benefit of tax relief by assessing officers under the charge of DIT(IT), Mumbai in March 2003, subsequent to which NOCs were being issued only after obtaining bank guarantees. However, the same was not being done in Bhavnagar, Gujarat charge which was irregular.	13.34
3	Madgaon, Goa	3	Demands relating to NOCs issued during 1999-2000 were still outstanding	6.06
4	Jamnagar, Gujarat	3	Tax levied based on tonnage indicated in charter agreements as against actuals carried by the assessee	2.88
5	Madgaon, Goa	1	Tax not levied though shipping profits were taxable in India	2.04
6	Jamnagar, Gujarat	1	DTAA relief incorrectly allowed for carriage of goods in coastal traffic	1.32