

Saturday
International
Tax
Gyaan

SITG

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No.

189

New series – International Business Transactions!!

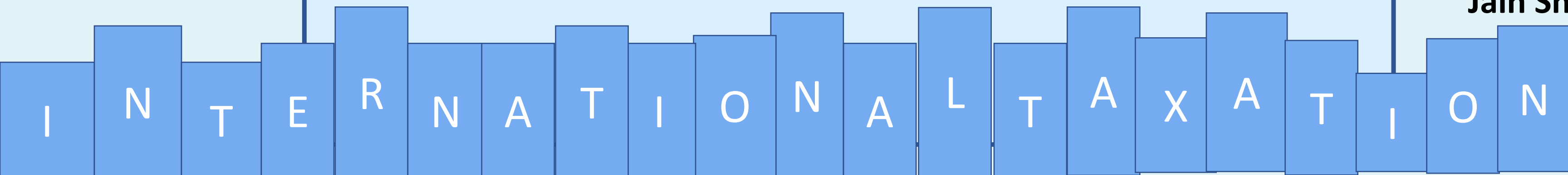
PART-III

#Nature of transaction

Reimbursement of International Transaction

20.01.2024

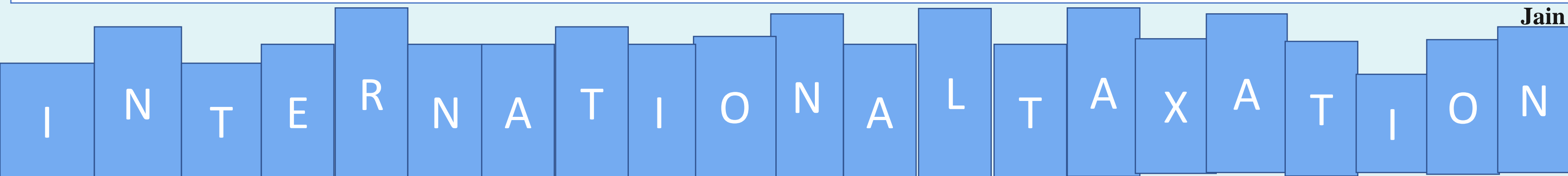
Jain Shrimal & Co.



Concept and examples

What shall constitute Reimbursement Expense?

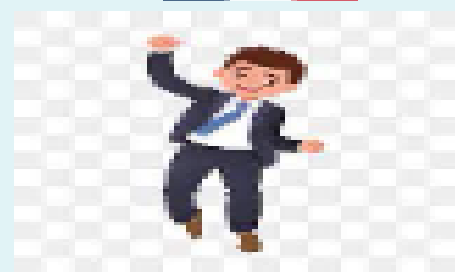
- In the case of *TISCO v. UOI [2001] 2 SCC 41*, the Hon'ble Supreme Court defined the meaning of Reimbursement expenses, where it says 'reimbursement has to mean and imply restoration of an equivalent for something paid or expended and pre-supposes previous payment'. The hon'ble Supreme Court further iterate that it would mean and imply to pay back or refund, or restoration of something paid extra.
- In another case of *Tejaji Farasram Kharwalla Ltd. v. CIT [1968] 67 ITR 95 (SC)*, the Hon'ble Supreme Court laid down the position of law, that the reimbursement of expense does not constitute income in the hands of the payee.
- In normal parlance, a reimbursement is a compensation paid by any person or organisation for any out-of-pocket investment made by another person or any other party that deals with former person or organisation. Some of such examples include business costs, insurance premium, etc.
- In contrast to regular pay, the reimbursement paid is not taxed as per the act.



Types of re-imbursments

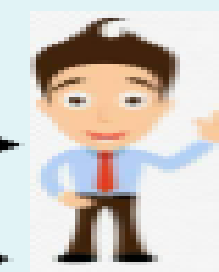
There are different types of re-imbursments which are mentioned as follows along with the case laws:

- Reimbursement of Allocated Costs/ Share of Common Expenses [**Relevant Case Law- DDIT(IT) v. A.P. Moller-2013-TII-198-ITAT-MUM-INTL; International Hotel Licensing Co. – (2007) 288 ITR 534 (AAR), (2007) CTR 261 (AAR); Mahindra & Mahindra Ltd. v. ADIT [2011] 16 taxmann.com 386 (Mum.-Trib.)**]
- Reimbursement of Actual Costs/ Expenses incurred for and on behalf of the assessee. [**Relevant Case Law- WNS North America Inc.- [2012] 28 taxmann.com 173 (Mum-Trib.)**]
- Reimbursement of expenses with markup [**Relevant Case Law- Coca Cola India Inc. v. ADCIT – (2006) 7 SOT 224 (Delhi)**]
- Reimbursement of expenses to contractors [**Relevant Case Law- Van Oord ACZ Marine Contractors BV v. ADIT – [2012] 23 taxmann.com 146 (Chennai)/ 2012-TII-62-ITAT-MAD-INTL**]
- Reimbursement of Travelling Expenses & other expenses in connection with technical services [**Relevant Case Law- Saipem S.A. v. DDIT – (2012) 26 taxmann.com 77 (Mum.- Trib.)/ 2012-TII-123-ITAT-MUM-INTL**]
- Payment made to third parties located outside India on behalf of assessee in India [**Relevant Case Law- SKOL Breweries Ltd. v. ACIT – (2013) 29 taxmann.com 111 (Mum.- Trib.)**]
- Reimbursement of expenses- incurred in respect of employees of Indian companies sent abroad [**Relevant Case Law- Global E-business Operations Pvt. Ltd. v. DCIT – (2012) 23 taxmann.com 455 (Bang.-Trib.)**]



Mr. X
(Supplier of
service)

Mr. X provided services to service recipient



Mr. Y
(Recipient
of service)

Mr. Z made the payment on
behalf of Mr. Y



Mr. Z
(3rd Party)

Mr. Y reimbursed the amount paid
on behalf of him by Mr. Z



Scenerio-1: The amount paid by Mr. Z is Rs. 100, whereas he is asking for Rs. 102 from Mr. Y, therefore there is an element of profit involved. **The transaction will not be considered as reimbursement, however the question is that whether Rs. 100 shall be considered as 'reimbursement' and remaining Rs. 2 shall be considered as taxable, OR whole Rs. 102 shall be taxable?**

Scenerio-2: The invoice was in the name of Mr. Y against the payment made by Mr. Z (on behalf of Mr. Y), whether the payment made by Mr. Y to Mr. Z shall constitute 'reimbursement'? **Since the invoice was in the name of recipient of services, therefore the payment made by the recipient to third party shall be considered as 'reimbursement'**

Scenerio-3: The invoice was in the name of Mr. Z , however the services were used by Mr. Y, whether the payment made to Mr. Z shall constitute 'reimbursement'? **Since the invoice was in the name of third party, therefore the payment made shall not be considered as 'reimbursement'. the mandatory condition is that the invoice against the payment made shall be in the name of recipient of the services**

Scenerio-4: There was no invoice submitted against the payment made by Mr. Z, however submitted other proof of payments like Bank statement to corroborate the payment by Mr. Z, whether the payment made shall be 'reimbursement ' or not? **In our opinion, such payment made shall not constitute 'reimbursement'.**

Comments

- In the cases discussed above and cases listed earlier, it only discuss about the applicability of tax on the transaction of payment made by the service recipient to the third party for making payment on behalf of recipient. However, there may be a tax liability on the actual transaction occurred between the service provider and the recipient of service although the payment is made to a third party.
- The assessee should be careful as the payment made to a third party routed through group concern does not necessarily mean that since payment is not made directly to a non-resident concern the TDS could be skipped.
- Further while checking any case of reimbursement of expense, the below-mentioned points should be kept in mind-
 - a. Either the name in the invoice should be in the name of actual service recipient, or it could be an allocation of cost by the group organization to its subsidiaries, wherein the proof of actual cost incurred and cost allocation should be available.
 - b. If the full payment is made to the service provider by a third party without deducting applicable TDS, then the service recipient will have to gross up the tax amount, if tax is applicable on such transaction. Further while checking the taxability, the tax documents shall of the service provider, and not of the third party.



Visit our website blog for previous case laws.-

<https://jainshrimal.com/blog/#taxgyaan>



**Join Whatsapp group for discussion on International taxation
By scanning the QR-**

I N T E R N A T I O N A L T A X A T I O N

Jain Shrimal & Co.



Disclaimer

- This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- This presentation is based on the information available to us at the time of preparing the same, all of which are subject to changes that may, directly or indirectly impact the information and statements given in this presentation.
- Neither Jain Shrimal & co. nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments, and seek appropriate professional advice.

