BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
AE	Associated Enterprise
AWS	Amazon Web Services
AO	Assessing officer
AY	Assessment Year
ALP	Arm's Length Price
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income-tax
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CII	Cost Inflation Index
CBDT	Central Board of Direct Taxes
CUP	Comparable Uncontrolled Transaction
DAPE	Dependent Agent Permanent Establishment
DTAA	Double Taxation Avoidance Agreement
DRP	Dispute Resolution Panel
HC	High Court
Hon	Hon'ble
ITC	Input Tax Credit
ITAT	Income Tax Appellate Tribunal
IFSC	International Financial Services Centre
JV	Joint Venture
MCA	Ministry of Corporate Affairs
PE	Permanent Establishment
PY	Previous Year
PLI	Profit Level Indicator
PCIT	Principal Commissioner of Income Tax
RPM	Resale Price Method
SC	Supreme Court
TDS	Tax Deducted at Source
Act	Income-tax Act, 1961
TRC	Tax Residency Certificate
TPO	Transfer Pricing Officer

Direct Taxes

A. Corporate Taxes

1. ***Supreme Court[1] :*** *Explains 'Mutuality Principle' qua Clubs' FD interest income*

Background

In this case the Hon. Supreme Court dealt with the issue -

> *Whether the deposit of surplus funds by the appellant Clubs, by way of bank deposits in various banks, is liable to be taxed in the hands of the Clubs or, whether the principle of mutuality would apply and the interest earned from the deposits would not be subject to tax under the provisions of the Act?*

The related controversy was whether, the judgment of Hon. Supreme Court in ***Bangalore Club[2]*** calls for reconsideration in view of the earlier order of Hon. Supreme Court in ***Cawnpore Club[3]***.

In ***Bangalore Club (supra)*** it was held that interest earned by the assessee club on the surplus funds invested in fixed deposits with the corporate member banks was NOT exempt from levy of income tax, based on the doctrine of mutuality. Whereas in ***Cawnpore Club (supra)*** it was held that income earned by the assessee from the rooms let out to its members cannot be taxed because of the principle of mutuality.

Judgement of Hon. Supreme Court

- In our view, the order passed in ***Cawnpore Club (supra)*** binds only the parties in those appeals and cannot be understood as a precedent for subsequent cases for the following reasons: firstly, the order in ***Cawnpore Club (supra)*** is not on the

[1] Secunderabad Club and others [TS-457-SC-2023]

[2] Bangalore Club v. CIT (2013) 5 SCC 509

[3] CIT v. M/s Cawnpore Club Ltd., Kanpur (2004) 140 Taxman 378 (SC)

basis of any reasoning or a deduction made as to whether on the interest earned on fixed deposits made by a club in a bank, income tax would be attracted or not. In the absence of any deduction or reasoning or analysis, the said order cannot carry precedential value so as to be binding on this Court in a subsequent case.

- Therefore, we do not find any fault in a subsequent Coordinate Bench of this Court in ***Bangalore Club (supra)*** in not noticing the order passed in the case of ***Cawnpore Club (supra)*** while dealing, in a detailed manner, on the taxability of the income earned from the interest on fixed deposits made by the said Club in banks, whether the banks are members of the clubs or not.
- In the case of ***Bangalore Club (supra),*** the following triple test was applied for applying the principle of mutuality:
  i. Complete identity between the contributors and participators.
  ii. Action of the participators and contributors must be in furtherance of the mandate of the associations or the Clubs. The mandate of the Club is a question of fact which has to be determined from the Memorandum or Articles of Associations, Rules of Membership, Rules of the Organisation, etc., which must be construed broadly.
  iii. There must be no scope for profiteering by the contributors from a fund made by them which could only be expended or returned to themselves.
- Applying the aforesaid principles to the facts of the case, the Hon. Supreme Court held in ***Bangalore Club (supra)*** that interest earned by the club on surplus funds invested in fixed deposits with the corporate member banks was taxable. On a close reading of reasons assigned by this Court in ***Bangalore Club (supra)*** we find that they are justified and squarely apply to the case at hand and would not call for reconsideration.

2. ***Delhi High Court[4]:*** *Statement recorded during search under section 132(4) has evidentiary value, but statement recorded during survey under section 133A has no evidentiary value*

Background

A survey was carried out at the business premises of the assessee. During the survey, the Tax Officers impounded several documents, and recorded the

[4] ARN Infrastructure Ltd [TS-442-HC-2023(DEL)]

statements of the directors of the assessee.

One of the directors gave a statement which led to addition of Rs.10 crores to the taxable income of the assessee. This statement was taken on oath. It was this statement, sans any corroborative evidence, which formed the basis of the addition. The addition of Rs.10 crores to the taxable income of the assessee was made purely on the basis of the statement made by its director.

Judgement of Hon. Delhi High Court

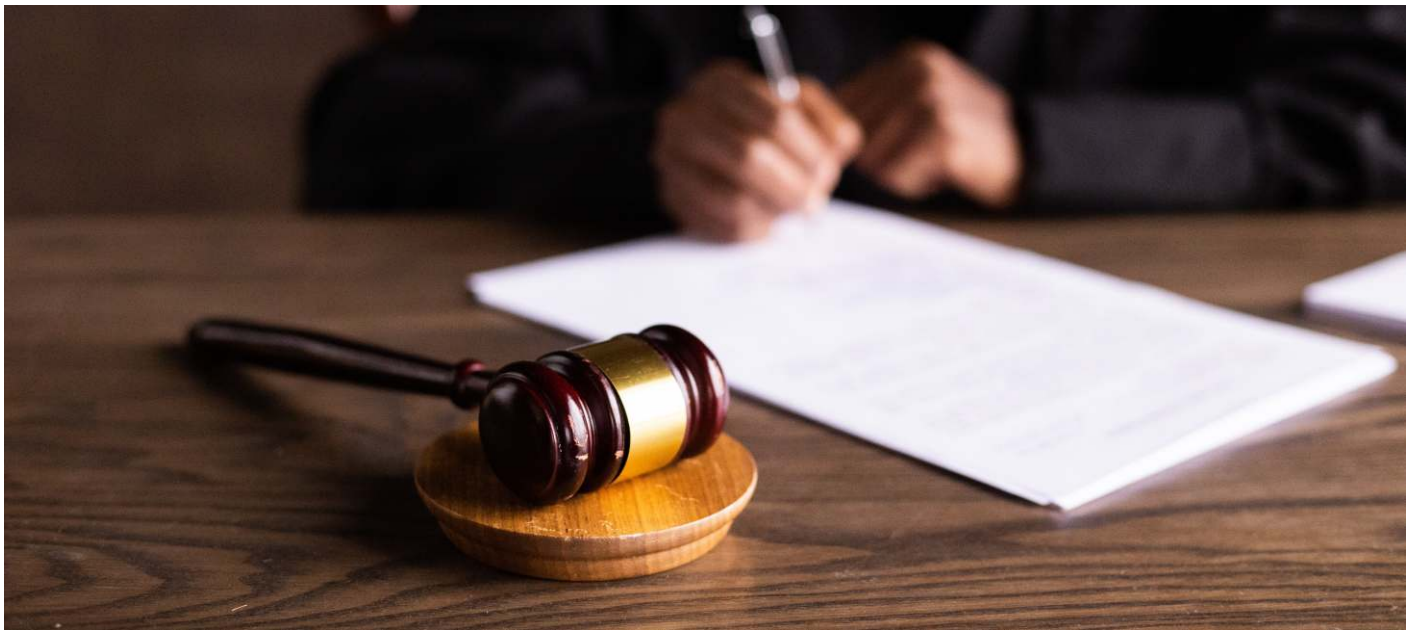
i. Although the statement appears to have been categorized as voluntary, what emerges is that this statement was made to "buy peace of mind". Thus, Rs.10 crores was surrendered by the director during survey, which was added to the taxable income of the assessee.

ii. Furthermore, concededly, while filing its return, the assessee did not include the amount in issue, i.e., Rs.10 crores which, according to the AO, had remained unexplained.

iii. The assessee was not furnished with a copy of the survey report.

iv. Given this position, the Tribunal, in our view, quite correctly has concluded that since there was no corroborative material available for making addition, the assessment order, qua this aspect, could not be sustained.

v. As observed by the Madras High Court in ***S. Khader Khan Son's***[5] case, t***here is a qualitative difference between the statement recorded under Section 133A and Section 132(4) of the Act.***



[5] CIT v. S. Khader Khan Son, (2008) 300 ITR 157 (Mad)

vi. The statement recorded under Section 133A of the Act has no evidentiary value, since the officer concerned is not authorized to administer oath and record a sworn statement. This is in contradiction with the statement recorded under Section 132(4) of the Act, which is recorded on oath by an officer who is vested with necessary powers.

vii. Given this position and the fact that no corroborative evidence was found to support the addition, we are not inclined to interfere with the impugned order passed by the Tribunal.

Our Comments:

If the Tax Officers only extract the declaration of income by recording the statement of assessee during the survey, and there is no other incriminating evidence, it is important to explore whether retraction should be done as soon as possible after the survey.

3. ***Delhi High Court[6]:*** *Depreciation on goodwill arising from approved amalgamation scheme is allowable*

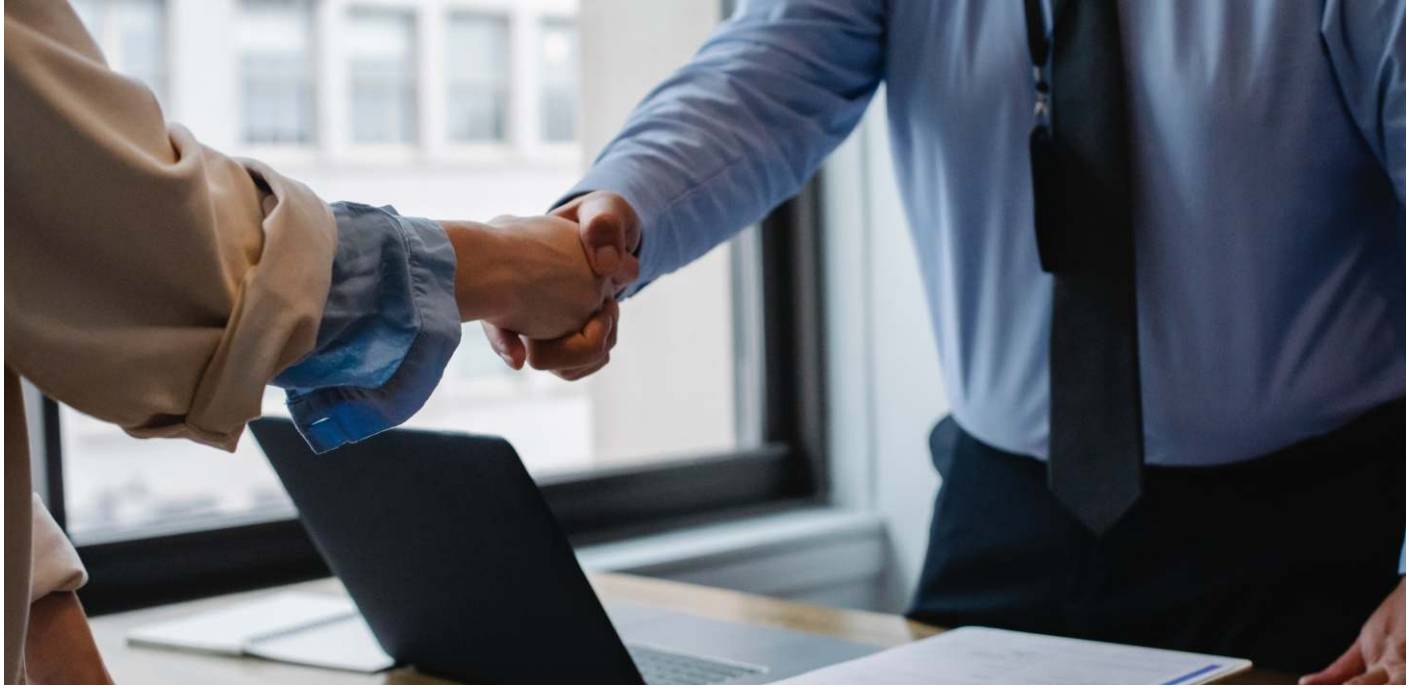
Background

The assessee had amalgamated with another company in terms of a Scheme of Amalgamation which came to be sanctioned by the Hon. Delhi High Court in February 2014.

Clause 4.4 of the Scheme of Amalgamation which came to be approved read as under -

> *"4.4 The excess of value of assets over the value of liabilities of the Transferor Company and the amount of equity shares to be allotted/payment to be made to the equity shareholders of the Transferor Company will be credited to the Capital Reserve account. However, where value of liabilities and amount of equity capital allotted/payment to be made to the equity shareholders of Transferor Company exceeds the value of assets of the Transferor Company taken over then such excess shall be debited by the Transferee company to the goodwill account."*

[6] Eltek Sgs Pvt Ltd [TS-441-HC-2023(DEL)]



The AO disallowed depreciation on goodwill that was created as a result of amalgamation.

Judgement of Hon. Delhi High Court

In ***Smifs Securities Limited the***[7] principal question dealt with by the Hon. Supreme Court was whether goodwill is an asset within the meaning of Section 32 of the Act and whether depreciation is allowable on the same. The Hon. Supreme Court categorically held that goodwill is an intangible asset which would clearly fall within the ambit of Explanation 3 to Section 32(1) of the Act, and so depreciation on goodwill is allowable in terms of Section 32 of the Act.

It is now well settled that a transfer in terms of a scheme of amalgamation which is sanctioned is accomplished by operation of law as opposed to an act of parties. It is in that backdrop that the decision in ***Smifs Securities (supra)*** assumes significance. The judgment rendered by the Supreme Court in ***Smifs Securities (supra)*** clearly recognises goodwill to be an intangible asset on which depreciation can clearly be claimed in terms of Section 32(1) of the Act.

Our Comments:

The judgement of Hon. Supreme Court in Smifs Securities (supra) had come in 2012. Based on it, several High Courts and ITATs had allowed depreciation on goodwill acquired during amalgamation. However, by Finance Act 2021 amendment was made prohibiting depreciation on goodwill w.e.f. AY 2021-22.

[7] CIT v. Smifs Securities Limited [2012] 348 ITR 302 (SC)

4. *ITAT Mumbai[8]: Gains from sale of JV's shares is Capital Gains, not Business Income; Set-off of Capital Loss, from sale of Group Company's shares, against Capital Gains from sale of JV's shares, is not colorable device*

Background

The assessee company had realized gains on sale of shares of Joint Venture (JV) with Morgan Stanley (India) Securities Pvt Ltd. Those gains were reported by the assessee in the return of income as Capital Gains.

The assessee also reported Capital Loss on sale of shares of a Group Company and set off that loss against the Capital Gain on sale of shares of JV.

The AO held that the gain on sale of shares of JV was not Capital Gains but Business Income, for the following reasons:

a. the entire consideration received is not for the value of the shares but for the value of business.

b. investment in JV is part of the business of the assessee and the investment is done as businessman and not as investor.

c. valuation of shares is not based on net worth but based on the future business which the assessee is losing due to disinvestment in JV.

On Capital Loss on sale of shares of the Group Company, and set off of such loss, the AO held that such loss was not genuine and set off of such loss against Capital Gain on sale of shares of JV was a colourable device which was not permissible. The AO relied upon the judgement of the Hon. Supreme Court in the case of ***Mcdowell & Co. Ltd[9]*** and concluded that the assessee, with the help of its own Group Company, had artificially created loss to cancel part of profit earned on sale of JV and thereby evaded tax.

Decision of Hon. ITAT

a. Capital Gains vs Business Income

The assessee had sold investment which the assessee has been holding for long period of time from which the assessee has been earning dividend income – so, as per decision of Hon. Supreme Court in ***Vodafone International Holdings B.V.[10]*** the

[8] J.M. Financial Ltd [TS-432-ITAT-2023(Mum)]
[9] Mcdowell & Co Ltd v. CTO 151 ITR 148 (SC)
[10] Vodafone International Holdings B.V. v. UOI 341 ITR 1 (SC)

sale of shares of JV was a transfer of capital asset and liable to capital gain tax.

The intention of the assessee is to hold to the shares of JV as investment is demonstrated by the reflection of the shares under investments in the Financial Statements.

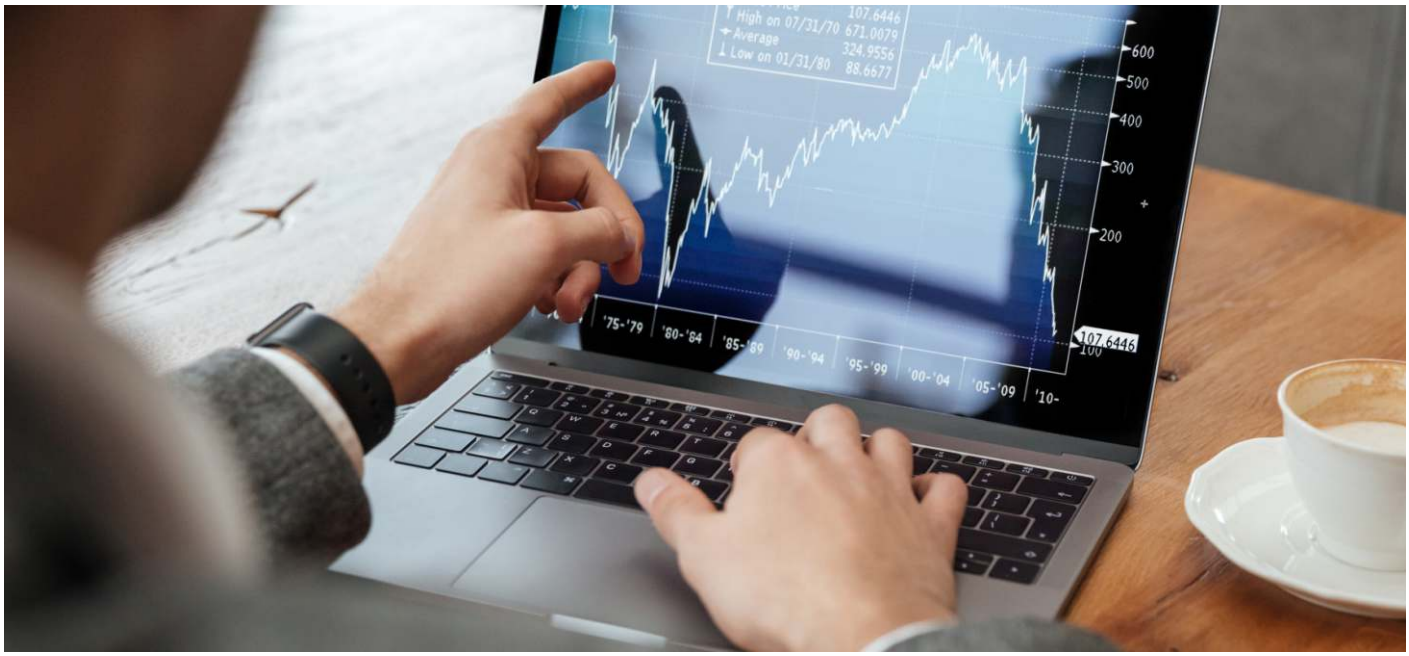
Accordingly, treatment of gain arising on transfer of shares of JV as business income is not sustainable; such gain is chargeable to tax under the head Capital Gains.

b. Sale of shares of Group Company at Loss

The assessee sold shares of Group Company to JM Financial Group Employees Welfare Trust, being a trust formed for the purpose of issuing ESOPs to the employees of the Assessee Group. During the year under consideration the assessee transferred 5.445 crores shares of Group Company to the Trust, and out of those shares 3.439 crore shares had already been issued to employees by the Trust under the ESOP scheme.

It is relevant to consider the decision of the Hon. Supreme Court in ***Walfort Share & Stock Brokers (P) Ltd***[11] where it is held that use of provisions of the Act for tax benefit cannot be called "abuse of law"; even assuming that the transaction was pre-planned there is nothing to impeach the genuineness of the transaction.

It is observed by the Hon. Supreme Court in ***Azadi Bachao Andolan***[12] that an act which is otherwise valid in law cannot be treated as to evade tax merely on the basis of some suspicious underlying motive supposedly resulting in some economic detriment or prejudice to the Revenue.



[11] CIT v. Walfort Share and Stock Brokers P Ltd [2010] 326 ITR 1 (SC)

[12] Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)

B. International Tax

1. ***Hon. Supreme Court of Spain[13]:*** *Conflict of tax residence must be resolved under the tiebreaker rules contained in the DTAA.*

Background

The taxpayer was a national of the United States of America (the US). But the taxpayer held substantial real estate property in Spain and owned six luxury vehicles there. The taxpayer also had several bank accounts in Spain.

Whether the taxpayer was a tax resident of the US or of Spain?

Based on 'the centre of economic interests' criteria as per the definition of 'resident' given under the personal tax laws of Spain, the Spanish tax authorities determined that the taxpayer qualified as a tax resident of Spain. The taxpayer, however, denied the alleged tax residency in Spain and claimed that he qualified as a tax resident of the US on basis of certificate of tax residence issued by the US Internal Revenue Service.

That certificate was rejected by the Spanish tax authorities on the ground that such certificate is granted to every US national and does not constitute proof of residence. The tax authorities also highlighted that the taxpayer had substantial wealth and economic links with Spain. In contrast, he could not prove any personal taxation in the US during the years in dispute.

Judgement of the Supreme Court of Spain

The Supreme Court of Spain held as follows:

- A State (Spain) signatory to a DTAA cannot unilaterally question the existence of a residence conflict.
- It must be presumed that the certificate of residence issued by the tax authorities of the Other Contracting State (the US) is valid, and the conflict of tax residence must be resolved by applying the tiebreaker rules contained in the DTAA.
- Specifically, the "tie-breaker" rule established in Article 4.2 of the US-Spain DTAA, referring to the "center of vital interests", is broader than the concept of "core of economic interests" of Article 9.1 b) of the Personal Income Tax Law of Spain, and therefore, they are not comparable.

[13] Don Artemio [TS-427-FC-2023]

In light of the above, the Spanish Supreme Court held that the tax authorities of Spain could not question the validity of the certificate of tax residence issued by other jurisdiction (the US).

2. ***Bombay High Court[14]:*** *Sec.153 limitation would prevail over the time-limit prescribed under Sec.144C.*

In this case ITAT set aside the assessment with direction to AO to make fresh assessment after re-examining International Tax or Transfer Pricing issues. For completion of fresh assessment section 153 (3) of the Act lays down time-limit of 1 year from end of the year in which the order of ITAT is received by Pr. CCIT/CIT. Say, order of ITAT setting aside assessment to AO, with direction to decide afresh certain International Tax issue, is received by the Pr. CCIT/CIT on 15 August 2023. In that case, the last date to complete the fresh assessment – after following the DRP procedure of section 144C[15] – will be 31 March 2025.

Section 144C states that –

a. DRP cannot issue direction after 9 months from the end of the month in which the draft order is forwarded to the assessee[16].

b. Upon receipt of the directions of DRP, the AO shall, notwithstanding anything to the contrary contained in section 153 or section 153B, complete the assessment, within 1 month from the end of the month in which directions of DRP are received[17].

Question is –

a. Whether the AO has to pass only Draft of the Fresh Assessment Order by 31 March 2025, or

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[14] Shelf Drilling Ron Tappmeyer Limited [TS-431-HC-2023(BOM)]

[15] In **Kennametal India Ltd [TS-465-HC-2023(KAR)-TP]** Hon. Karnataka High Court held that DRP Procedure of section 144C must be followed even for set aside assessment involving international tax or transfer pricing issues

[16] Section 144C (12)

[17] Section 144C (13)

b. Whether the AO has to pass Final Fresh Assessment Order in accordance with directions of DRP by 31 March 2025

If the answer is **'b'** above, then the DRP procedure of section 144C must be completed before 31 March 2025 and the AO must then complete the Final Fresh Assessment Order, in accordance with directions of DRP, by 31 March 2025. Is this a correct understanding of law despite prescription of no time-limit in section 144C (1), and despite exclusion of applicability of section 153 in section 144C (13)?

Judgement of Hon. Bombay High Court

The purpose of constituting DRP is to fast-track a special type of assessment. The overall time limits prescribed under section 153 have not been given a go by in the process. It does not stand to reason that proceedings on remand (set aside case) to the AO may be done at leisure sans the imposition of any time limit at all.

Having considered the language of sections 144C and 153, we cannot accept that the provisions of section 153 are excluded to the operation of section 144C. The time limit prescribed under section 153 would prevail over and above the time limit prescribed under section 144C. So, when there is a remand to the AO by the ITAT under section 254, the AO has to ensure that the entire procedure prescribed under section 144C is completed, and the final assessment order is passed, within the 12 month period provided under section 153 (3).

The exclusion of applicability of Section 153, in so far as non obstante clause in sub-section (13) of section 144C is concerned, is for limited purpose to ensure that dehors larger time available, an order based on the directions of the DRP has to be passed within 30 days from the end of the receipt of such directions.

Thus, the Hon. Bombay High Court followed the judgement of Hon. Madras High Court in **Roca Bathroom Products Private Limited[18].**

Our Comments:

Based on this decision , it is important to keep in mind that the tax authority's power is restricted , and in such cases the inner limitation (section 144C) must fall within the outer limitation (section 153), unless the statue explicitly permits it.In these types of cases, taxpayer may analyse the option to challenge the final assessment order being time barred.

[18] [TS-473-HC-2022(MAD)]

3. ITAT Delhi[19]: *Amazon's receipts from 'Cloud Computing Services' are neither Royalty nor FTS*

Background

The assessee (Amazon) provides standard and automated Cloud Computing Services (Amazon Web Services - AWS) publicly. These services are provided online to anyone, and are standardised without any customisation done for any particular customer.

In order to avail cloud computing services, customers enter into a standard AWS customer agreement which authorises the customers to access any particular cloud computing service they opt for. The customers themselves are responsible for the development, content, operation, maintenance and use of the customers' content, while availing the standard and automated cloud computing services.

Issue

Do the payments received by Amazon from Indian Customer(s) for rendering AWS Services qualify as royalty? Do such payments fall within the purview of Fees for Technical Services?

Decision of Hon. ITAT

a. Royalty

On perusal of the terms of the Customer Agreement, it is evident that the prerequisites for the impugned receipts to be treated as royalty income, in terms of Article 12(3) of the India-USA DTAA, are not met because –

i. the customers do not receive any right to use the copyright or other IP involved in AWS service

[19] Amazon Web Services, Inc [TS-419-ITAT-2023(DEL)]

ii. the customers are granted only a non-exclusive and non-transferable licence to access the standard automated services offered by Amazon without the source code of the licence being shared with the customer

iii. the customers have no right to use or commercially exploit the IP

iv. there is no equipment of any nature or at any time placed at the disposal of the customers by Amazon

In the light of the above factual matrix and in view of the various judicial precedents, we hold that the payments received by the assessee from Indian Customer(s) from rendering AWS Services do not qualify as royalty under Article 12(3) of the India-USA DTAA and also under section 9 (1)(vi) of the Act.

b. Fees for Technical Services (FTS)

The bare reading of Article 12(4)(b) of the India-USA DTAA clearly indicates that payment made towards technical or consultancy services constitutes FTS only if such services 'make available' technical knowledge, experience, skill, know-how or processes, etc. There are umpteen number of cases wherein the courts have held that in order for payments in respect of 'managerial, technical or consultancy services' to fall within the meaning of FTS, such services should 'make available' to the recipient of service such technical knowledge, experience, skill, know-how or processes, which enables the recipient of service to utilize the same in future on its own accord without receiving similar services in future from the service provider.

The above facts on record clearly establish that the AWS services provided by the Amazon are standardised services that do not provide any technical services to its customers nor satisfy the 'make available' test as the customers will not be able to make use of the technical knowledge, skill, process etc., used by Amazon in providing cloud services, by themselves in their businesses or for their own benefit without recourse to Amazon in future.

So, the impugned receipts of Amazon for AWS services/cloud computing services rendered to the customers in India do not fall within the purview of FTS under Article 12(4)(b) of the India-USA DTAA as the same do not satisfy the 'make available' clause envisaged therein.

4. *ITAT Mumbai[20]: If transactions with Dependent Agents are at Arm's Length Price then no further profits can be attributed to the Permanent Establishment.*

Background

Fedex Express International B.V. (the assessee) is a part of the multinational Federal Express Group ('FedEx Group'), a global provider of express transportation, e-commerce, and supply chain management services. The assessee is a company incorporated under the laws of the Netherlands. It is a tax resident of the Netherlands.

In relation to India, the assessee provides transportation services to two of its group entities in India, i.e., FedEx Express Transportation and Supply Chain Services India Private Limited (FETSCS) and TNT India Private Limited (TNT India) (together referred to as the 'Indian Associated Enterprises' / 'Indian AEs').

The assessee entered into a Transportation Services Agreement (TSA) with FETSC and TNT India. Pursuant to the said TSA, FETSCS and TNT India engaged the assessee for provision of transportation services outside India (i.e, from and to India), in respect of their respective customers' packages, against payment of International Transportation Fee and International Hub Service Fees respectively to the assessee. The assessee is responsible for the transportation and delivery of the said packages from an Indian airport to its ultimate destination outside of India, and vice-versa.

[20] Fedex Express International B.V. [TS-429-ITAT-2023(Mum)]

The AO alleged that the Indian AEs, FETSCS and TNT India, were acting as the dependent agents of the assessee in India, thereby constituting Dependent Agents Permanent Establishments (DAPEs) of assessee. Holding so the AO undertook profit attribution to the alleged DAPEs.

Before the ITAT the assessee did not challenge the existence of DAPEs, but only restricted its submission to the issue of profit attribution to the DAPEs.

Issue

If compensation to the Indian AEs, treated as DAPEs, is found to be at arm's length, then whether any further income should be attributed to the DAPEs in India?

Decision of Hon. ITAT

As per Article 7(2) of India-Netherlands DTAA, not all the profits of a foreign enterprise but only those profits which have economic nexus with India, would be taxable in India. If compensation to the Indian AEs, treated as DAPEs, is justified by FAR analysis and Transfer Pricing analysis and if it has been found to be at arm's length, then no further income should be attributed to the DAPEs in India,

Here, in this case Indian companies whose activities constitutes DAPEs of the assessee (a foreign enterprise), have been remunerated on an arm's length basis by taking into account all the functions, assets and risks in India. So, there is no scope for making any further attribution to the PE.

This proposition has been reiterated by the Hon. Supreme Court in the case of ***E-funds IT Solution Inc***[21] relying on its earlier decision of ***Morgan Stanley & Co***[22] wherein the Hon. Supreme Court has held that no further profits could be attributed, even if there existed a PE in India, where transactions between foreign enterprise in India and Indian entity which is the PE, are at arm's length price.

Our Comments:

When Non-Resident Taxpayers have a PE in India, the profits to PE should be attributed in accordance with the Arm's Length Principal of Transfer Pricing so that nothing further can be attributed during assessment proceedings. In these type of case it is also important to analyse whether PE is actually created in India or not.

[21] 86 taxmann.com 240 (SC)

[22] 162 Taxman 165 (SC)

5. *ITAT Bangalore[23]: Interconnect Charges received by Foreign telecom company not taxable as royalty.*

Background

The assessee is a telecom company incorporated in Spain, and provides telecommunications services, interconnection services, internet services, etc. The assessee entered into interconnect services agreements that enables subscribers of one telecom operator to call a subscriber of another operator in any part of the world and vice-versa for receiving the calls from subscribers of other operators. For the relevant years under consideration, assessee received amounts towards Interconnect Charges (hereinafter referred to as IUC) from Indian telecom operators, namely Bharti Infotel Limited, Tata Communications Limited ("TCL") and Vodafone Essar South Limited.

Issue

Whether the IUC charges are taxable in hands of the assessee (a Non Resident Company) as Royalty?

Decision of Hon. ITAT

i. It is an admitted fact that there is no transfer of any intellectual property rights nor any exclusive rights have been granted by the assessee to the service recipients.

ii. The definition of “Royalty” under the DTAA is much narrower in its scope and coverage, than the definition of “Royalty” contained in section 9(1)(vi) of the Act.

iii. The word employed in DTAA is 'use or right to use', in contradistinction to,

[23] Telefonica Depreciation Espana SA [TS-463-ITAT-2023(Bang)]

"transfer of all or any rights" or 'use of', under the Act.

iv. Various judicial precedents[24] lay down that, in order to satisfy 'use or right to use', the control and possession of right, property or information should be with payer.

v. Similar issue came up before Hon. Delhi Tribunal in case of Bharti Airtel[25]. The issue considered therein was in respect of payment towards call interconnectivity charged for call transmission on foreign network. The Tribunal therein, on applying ratios of various judicial precedents, held it not as 'Royalty'.

vi. On perusal of the agreement between the assessee and the end users it is noted that the assessee installed and operated sophisticated equipments for interconnect services with the view to earn income by allowing the users to avail the benefits of such equipments or facility. It does not tantamount to granting the use or the right to use the equipment or process so as to be considered as royalty within the definition of "royalty" as contained in clause 3 of Article 13 of India-Spain DTAA.

vii. Further, in the present facts of the case, at no point of time, any possession or physical custody, control or management over any equipment is received by the end users. It is also noted that the process involved in providing the services to the end users is not "secret" but a standard commercial process followed by the industry players. Therefore, such process also cannot be classified as a "secret process" under the definition of "royalty" given in clause 3 of Article 13 of India-Spain DTAA.

viii. We are therefore of the opinion that the receipt of IUC charges cannot be taxed as Royalty under Article 13 in India of India-Spain DTAA.

ix. Reliance was placed on the judgement of Hon. Karnataka High Court in ***Vodafone Idea Ltd[26]*** where the Hon. Karnataka High Court followed the decision of Hon. Supreme Court in case of ***Engineering Analysis Centre of Excellence Pvt Ltd[27]*** and held that payments made to Non-Resident Telecom Operators for providing interconnect services in foreign countries is not chargeable to tax as royalty.

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[24] (a) Decisions of Authority for Advance Ruling [hereinafter referred to as AAR], in case of Cable & Wireless Networks India (P.) Ltd., In re, reported in (2009) 182 Taxman 76; (b) Decision of AAR in case of ISRO Satellite Centre reported in (2008) 307 ITR 59; (c) Decision of AAR in case of Dell International Services (India) P. Ltd.In.re. reported in (2008) 172 Taxman 418

[25] Bharti Airtel vs. ITO (TDS) reported in (2016) 67 taxmann.com 223

[26] Vodafone Idea Limited (Formerly Known As M/S Vodafone Mobile Services Ltd) [TS-406-HC-2023(KAR)]

[27] Engineering Analysis Centre of Excellence Pvt Ltd v. CIT reported in (2021) 432 ITR 471 (SC)

C. Transfer Pricing

1. *ITAT Mumbai[28]: Corporate Guarantee Fee should not be benchmarked at 0.50% on basis of Earlier Year's ITAT Order, but by applying Most Appropriate Method for the Current Year.*

Background

The assessee had given Corporate Guarantee to banks against loan taken by Associated Enterprise, without charging any guarantee fee. The TPO benchmarked the Guarantee Fee by comparing the Corporate Guarantee rates with Bank Guarantee rates.

In the earlier year the ITAT, in assessee's own case, had determined ALP of Corporate Guarantee Fee at 0.50%. But for the current year the ITAT declined to follow the earlier year's order.

Is the ITAT justified in taking a different view in the current year?

Order of Hon. ITAT Mumbai in the Current Year

i. The TPO has compared the corporate guarantee rates with bank guarantee rates which cannot be upheld because there is a basic difference between both these instruments.

ii. ALP of an international transaction is required to be determined on the basis of economic conditions, commercial factors, relationship between the AEs and benefit of the international transaction existing **for each year.**

iii. ALP of Corporate Guarantee Fee is required to be determined by adopting one of the methodologies as provided by the OECD Transfer Pricing Guidelines: (1) Comparable Uncontrolled Price, (2) Yield Approach (Interest Saving Approach), (3) Cost Approach, (4) Valuation of Expected Loss Approach, (5) Capital Support Method or (6) Any Other Method.

iv. The Special Bench in ***Aztec Software & Technology Services Ltd[29]***, affirmed by Hon. Karnataka High Court[30], held that the mandate of section 92(1) is that for every International Transaction, income has to be determined having regard to ALP.

v. So, it is mandatory to determine ALP the Corporate Guarantee Fee by adopting the Most Appropriate Method out of the prescribed methods.

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[28] Graves Cotton Ltd [TS-461-ITAT-2023(Mum)-TP]

[29] [2007] 107 ITD 141 (BANG)(SB)

[30] [2012] 23 taxmann.com 413 (Karnataka)

vi. We are conscious of the fact that the judicial precedent binds us, but we are also conscious of the fact that the provisions of section 92C (3) of the Act, the decision of Special Bench in ***Aztec Software & Technology Services Ltd (supra)*** affirmed by honourable Karnataka High Court, and the OECD T P Guidelines have higher binding precedent than the order of ITAT in assessee's own case.

vii. We are also conscious of the fact that ALP of the Corporate Guarantee Fee for this year may be less than 0.5%.

viii. Therefore, we set-aside the issue back to the file of the AO/TPO with a direction to determine the ALP of Corporate Guarantee Fee by adopting the Most Appropriate Method.

Our Comments:

It is not end of the matter if the ITAT has determined ALP of Corporate Guarantee Fee at 0.50% for earlier years. For later years, Taxpayers can argue for lower rate of Corporate Guarantee Fee on basis of proper benchmarking, supported by the data of (a) interest saved by the AEs due to Guarantee and (b) credit ratings of the assessee as well its AEs.

2. *Karnataka High Court[31]: Procedure of Sec. 144C (Dispute Resolution Panel - DRP) must be followed even for set aside assessment requiring fresh determination of Arm's Length Price (ALP).*

Background

The ITAT had set aside the determination of ALP of an international transaction to the AO/TPO. While passing the fresh Assessment Order the AO did not follow the

[31] Kennametal India Ltd [TS-465-HC-2023(KAR)-TP]

DRP procedure of Section 144C of the Act regarding forwarding the draft of the proposed assessment order to the assessee.

The assessee filed Writ Petition to the High Court.

Judgement of Hon. Karnataka High Court

It is clear that only a portion of the order of assessment was set aside insofar as the fixation of ALP of the international transaction undertaken by the assessee. However, if ALP of an international transaction is to be re-looked into after fresh report of the TPO, the procedure of Section 144C of the Act is required to be followed for completion of the fresh assessment proceedings, even if only a portion of the assessment order is set aside. That would be the only manner of construing the mandate under Section 144C, which confers right on the assessee to receive a draft of the proposed order of assessment.

Our Comments:

If the AO has not provided Draft Assessment Order under section 144C, before completing any ***set aside*** assessment on Transfer Pricing or International Tax issues, then Taxpayers should consider filing Writ Petition before High Court to challenge the Fresh Assessment Order.

3. *ITAT Mumbai[32]: Assessee cannot keep changing Most Appropriate Method to benchmark purchases from Associated Enterprises.*

Background

The assessee imported truck tank equipment from its Associated Enterprise (AE). That equipment was sold to customers who were transporting fuel from storage tank depot of oil companies in India to various retail outlets. For benchmarking at arm's length, the assessee adopted Resale Price Method (RPM) as the Most Appropriate Method and submitted that the AE had sold the same product to third party at higher price as compared to the price charged to the assessee.

According to the TPO, the assessee and its AE are operating in different economic circumstances and the AE caters to different customers situated in different market conditions. Therefore, there cannot be comparison of prices charged to third parties globally by the AE with the prices charged to the assessee.

[32] Franklin Wardcorpp India Private Limited [TS-480-ITAT-2023(Mum)-TP]

Thus, the TPO rejected RPM as the Most Appropriate Method, and instead adopted Transactional Net Margin Method (TNMM) as the Most Appropriate Method.

Before the learned Dispute Resolution Panel (DRP), assessee contended that the Comparable Uncontrolled Price (CUP) Method is the Most Appropriate Method. Thus, at different stages the assessee adopted different Transfer Pricing Methods as the Most Appropriate Method.

Is the assessee justified in changing the Most Appropriate Method at different stages of the proceedings?

Decision of Hon. ITAT

The ITAT noted that even before the ITAT the learned Authorized Representative of the assessee also kept changing the Most Appropriate Method. In view of the assessee's change in the Most Appropriate Method at different stages of the case, the ITAT set aside the whole appeal back to the file of the TPO with a direction to the assessee –

(a) to submit contemporaneous documents and show which method is the Most Appropriate Method, and

(b) then benchmark its international transaction by selecting the Most Appropriate Method stating the Functions, Assets and Risks of the assessee.

Our Comments:

It is highly recommended that taxpayer exercise great care and diligence in benchmarking their international transaction and specified domestic transaction to avoid costly and unnecessary disputes. This case also highlights the importance of seeking proper guidance and expertise at the time of filing Form 3CEB. Therefore, it is absolutely necessary that the process of benchmarking is approached with utmost care and attention to detail.

4. ITAT Delhi[33]: *For purposes of Transfer Pricing Deferred Shares must be valued just like Ordinary Shares*

Background

The assessee acquired two types of shares of EAST Ltd (an Associated Enterprise): Ordinary Shares and Deferred Shares. The Ordinary Shares were acquired at market value whereas the Deferred Shares were acquired at book value. Acquisition of Deferred shares at book value, or at par value, did not give the assessee any right to vote, to participate in the profits or, except in some specified circumstances, to participate on winding-up.

During the year under consideration, the assessee redeemed the Deferred Shares held in EAST Ltd at their book value, or par value; and redeemed the Ordinary Shares at their market value. The assessee redeemed investment in Deferred Shares at par on the ground that acquisition of Deferred Shares did not entitle the assessee to vote and to participate in the profit of EAST Ltd. According to the assessee the Deferred Shares and Ordinary Shares had different rights and restrictions. Ordinary Shares carried the right to vote, to receive dividend and to participate on winding-up.

The assessee contended that the Deferred Shares were acquired with the sole objective to guard against the dilution of its 25.10% shareholding in Ordinary Shares of EAST Ltd. To guard against shareholding dilutions of the assessee the concerned Investment Agreement provided that if the assessee' s shareholding represents less than 25.10%, then the Deferred Shares shall automatically be converted into Ordinary Shares to the extent of the dilution.

Issue

Whether the redemption of Deferred Shares of the AE, at par, met the Arm's Length Standard of Transfer Pricing Regulations?

Decision of Hon. ITAT

i. *The main contention of the assessee is that the Deferred Shares are non-marketable, do not have voting rights and do not receive dividends.*

ii. *But we have observed that the Deferred Shares are actually converted into Ordinary Shares and once converted as Ordinary Shares they acquire all the benefits and characters attributable to Ordinary Shares.*

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[33] Fabindia Overseas Pvt Ltd [TS-473-ITAT-2023(DEL)-TP]

iii. *The Deferred Shares carried valuable rights because they would automatically be converted into Ordinary Shares when the shareholding of the assessee in East Ltd falls below 25.10%.*

iv. *Keeping in view the fact that the Deferred Shares can be converted into Ordinary Shares without any encumbrances, we uphold the TPO's order of valuing the transfer (redemption) of Deferred Shares at market value.*

5. *ITAT Bangalore[34]: Rejects negative working capital adjustment for captive service provider*

Background

The TPO made a negative working capital adjustment to the average PLI of the final set of comparables.

The assessee argued as under –

i. The assessee is a captive service provider and does not bear any working capital risks.

ii. working capital adjustment is made for the time value of money lost when credit time is given to the customers.

iii. The assessee is not an entrepreneur but a captive service provider which is entirely funded by the Aes.

iv. This being so, the assessee does not stand to lose anything as it is compensated on a total cost-plus basis.

v. The assessee is running the business without any working capital risk as compared to the comparables.

[34] Dell International Services India Private Limited [TS-498-ITAT-2023(Bang)-TP]

vi. Therefore, requirement for adjustment of negative working capital does not arise.

Decision of Hon. ITAT

This issue came for consideration before this Tribunal in the case of ***M/s Lam Research (India) Pvt Ltd***[35] wherein it was held as under:

> *Negative working capital adjustment cannot be carried out, where the assessee is a captive service provider. Here also it is an admitted position that assessee was a captive service provider and its services are entirely rendered to its AE abroad... We, therefore, direct that no negative working capital adjustment shall be carried out on the average PLI of the final set of comparables."*

In view of the above order of the Tribunal, we direct the AO that no negative working capital adjustment shall be carried out.

D. CBDT Circulars and Notifications

1. CBDT notifies exemption of IFSC Unit's shipping lease rental receipts from TDS[36]

CBDT, vide Notification No. 57/2023 Dated Aug 1, 2023, has notified that the Central Government has exempted TDS under Section 194-I on payment in the nature of lease rent or supplemental lease rent made by a person to an International Financial Services Centre (IFSC) Unit for lease of a ship.

The exemption is subject to the condition that the IFSC Unit i.e. lessor shall:

i. furnish a statement-cum-declaration in FormNo.1 to the lessee with details of previous years relevant to the 10 consecutive AYs for which the lessor opts for claiming deduction under sub-sections (1A) and (2) of Section 80LA, and

ii. such statement-cum-declaration shall be furnished and verified in the manner specified in Form No.1, for each previous year relevant to the ten consecutive AYs for which the lessor opts for claiming the deduction.

The lessee shall:

I. not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement-cum-declaration in Form No. 1 from the lessor, and

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[35] M/s Lam Research (India) Pvt Ltd v. DCIT in ITA Nos.1473 & 1385/Bang/2014 dated 30.4.2015

[36] Notification No. 57/2023, dt. Aug 1, 2023

ii. also furnish the particulars of all the payments made to lessor on which tax has not been deducted in view of this Notification in the TDS statement; The Notification also provides that the relaxation shall be available to the lessor only during the said previous years relevant to the 10 consecutive AYs as declared by the lessor in Form No. 1 for which deduction under Section 80LA is being opted and that the lessee shall be liable to deduct tax on payment of lease rent for any other year.

2. *CBDT notifies extension of Transfer Pricing Safe Harbour Rules for AY 2023-24*[37]

CBDT has issued notification extending the applicability of Transfer Pricing Safe Harbour Rules under Rule 10TD of Income-tax Rules to AY 2023-24. This has the effect that the eligible transactions and their notified profit margins, under the Transfer Pricing Safe Harbour Rules, will remain unchanged from AY 2022-23.

3. *CBDT invites comments on Form for Inventory Valuation Report (Form No. 6C) released for purposes of Special Audit under Section 142(2A)*[38]

Section 142(2A) [Special Audit] provides that if at any stage of proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Pr CCIT or CCIT or Pr CIT or CIT direct the assessee to have its accounts audited by an accountant.

[37] Notification No. 58/2023/ F. No. 370142/26/2023-TPL

[38] F. No. 370142/29/2023-TPL, Dated 16th of August 2023

In order to ensure that inventory is valued in accordance with various provisions of the Act Finance Act, 2023 made amendment in Section 142(2A) to enable Assessing Officer to direct the assessee to get inventory valued by a Cost Accountant, nominated by the Pr CCIT or CCIT or Pr CIT or CIT.

Assessee is required to furnish the report of inventory valuation in the prescribed form duly signed and verified by the Cost Accountant.

To make the above provision operational, necessary amendments shall be carried out in Rule 14A and Rule 14B of the Income Tax Rules. In addition, a draft Form No. 6C (form for inventory valuation report) has been formulated by the CBDT. The draft Form 6C has been released to public by the CBDT inviting comments by Aug 31, 2023.

4. CBDT issues Guidelines on 'Life Insurance Policy' tax exemption pursuant to Finance Act, 2023 amendments[39]

Clause (10D) of section 10 provides for income-tax exemption on any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to certain exclusions.

The Finance Act, 2023 amended clause (10D) of section 10 of the Act by substituting the existing sixth proviso with the new sixth, seventh and eighth provisos.

Now the CBDT has issued guidelines to remove any difficulty which may arise while giving effect to the provisions of the said clause.

a. Explanation on consideration received under a Life Insurance Policy

Consideration received during the previous year under an eligible life insurance policy shall be exempt or not exempt under clause (10D) of section 10 of the Act, will depend upon the satisfaction of other provisions of said clause.

This is explained by way of 13 examples illustrating different situations.

In addition, clarification is also provided on GST Component and Premium of Term life insurance policy as under –

b. Clarification on GST Component

In addition to the above, it is also clarified that the premium payable/ aggregate

[39] Circular No. 15 of 2023, Dated 16th August, 2023

premium payable for a life insurance policy/ policies, other than a unit linked insurance policy, issued on or after the Ist day of April, 2023, for any previous year, shall be exclusive of the amount of the Goods and Service Tax payable on such premium.

c. Clarity on Premium of Term life insurance policy

It is further clarified that the provision of the sixth and seventh proviso of clause (10D) of section 10 shall not be applicable in case of a term life insurance policy i.e. where sum under a life insurance policy is only paid to the nominee in case of the death of the person insured during the term of the policy and no amount is paid to anyone if the insured person survives the policy tenure.

5. CBDT notifies Rule 11UACA for computation of income chargeable to tax out of any sum received under a life insurance policy[40]

Finance Act 2023 has inserted clause (xiii) in Section 56 (2) for taxing -

Where any sum received, including the amount allocated by way of bonus, under a life insurance policy, other than the sum received under a unit linked insurance policy which is not to be excluded from the total income of the previous year in accordance with the provisions of clause (10D) of section 10, the sum so received as exceeds the aggregate of the premium paid, during the term of such life insurance policy, and not claimed as deduction under any other provision of the Act, computed in such manner as may be prescribed.

Now, the CBDT has notified Rule 11UACA for computation of income chargeable to tax under clause (xiii) of Section 56 (2), This Rule prescribes that for the purpose of clause (xiii) of Section 56 (2), where any person receives at any time during any

[40] Notification No. 61/2023/ F.No.370142/28/2023-TPL, Dated 16th August, 2023

previous year any sum under a life insurance policy, then, the income chargeable to tax under the said clause during the previous year in which such sum is received shall be computed in the manner provided in the Rule.

6. CBDT amends perquisite value of Rent-free accommodation[41]

Starting from the 01st September 2023, the CBDT has amended Rule 3(1) of Income tax rules. The changes have been made to calculate the perquisite value of Rent-free accommodation. The amendments are as follows:

1. When an employer provides unfurnished accommodation to an employee, the taxable value of the accommodation will be calculated based on the following reduced rates if the employer owns the property:

Population of City	Perquisite Value	
	Before 01-09-2023	On or after 01-09-2023
Below 10,00,000	7.5% of Salary	5% of Salary
10,00,000 to 14,99,999	10% of Salary	5% of Salary
15,00,000 to 24,99,999	10% of Salary	7.5% of Salary
25,00,000 to 40,00,000	15% of Salary	7.5% of Salary
Above 40,00,000	15% of Salary	10% of Salary

2. In Instances where an employer takes unfurnished accommodation on lease or on rent and provides it to employee, the taxable value will now be calculated as the lower of 10% of salary (earlier 15% of salary until 31-08-2023) or actual rent paid by the employer.
3. Additionally, if the same accommodation is continued to be provided to same employee for more than 1 year, the valuation in subsequent year will not exceed the first year's valuation adjusted by cost inflation index. The term " First year" in this context refers to either the Financial Year 2023-24 or the Financial year in which the accommodation is provided to the employee, whichever is later.

[41] Notification No. 65/2023/F. No. 370142/21/2023 – TPL, Dated 18th August 2023

Benami Property Act

1. ***Madras High Court[42]:*** *Upholds provisional attachment under Benami Property Act.*

Background

The Initiating Officer provisionally attached properties of the suspected beneficiaries of a benami transaction, under section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter would be referred to as Benami Property Act).

In response the property owners filed Writ Petition before Hon. Madras High Court contending that order under section 24(3) provisionally attaching the properties should be quashed as the same is illegal and void.

The property owners argued that the minimum criterion prescribed under Sec.24(3) of the Act, for provisionally attaching the properties of the suspected beneficiaries of a benami transaction, is that the Initiating Officer should form an opinion that the property suspected to be held benami is at the risk of being alienated. But in the present case, the Initiating Authority has not applied his mind to the situation and has drawn an opinion without any rational basis, and the attachment order did not disclose the grounds on which the initiating authority formed his opinion.

Judgement of Hon. Madras High Court

- The scheme of the Benami Property Act –
  - (a) makes benami transaction a crime, and
  - (b) provides for the confiscation of the property found to be held benami.
- It also provides that both the benamidars as well as the beneficiary are liable for criminal prosecution under section 53 of the Act.

[42] M. Kumudhavalli [TS-454-HC-2023(MAD)]

- An attachment of property, till an order of confiscation is made, is only a preliminary step in that direction, and all that is required at that point in time is the existence of a suspicion that the property could be involved in a benami transaction.
- When a show cause notice under section 24(1) is issued before provisionally attaching the property, it is based only on this prima facie suspicion, and this suspicion is sufficient for the initiating authority to form an opinion on provisional attachment.
- Till a decision is taken on the show cause notice issued under section 24(1) of the Act, the property which might face confiscation in an eventuality of final adjudication enabling it, must be secured for purposes associated with the working of the Act. It will be silly for an initiating authority to let an alienation of a benami property even as it tries to fix responsibility on the suspects. A provisional order of attachment needs to be understood in that context.
- In the backdrop of what is stated above, the provisional attachment made by the initiating officer cannot be termed as bad in law. He has done that which the statute contemplates. And, this attachment is only provisional. Admittedly, the matter is now pending before the Adjudicating Authority. The petitioners have all the opportunities to approach the adjudicating officer and explain why the provisional order of attachment is bad.
- To conclude, this Court does not find merit in these petitions and hence, all the writ petitions stand dismissed.

Goods and Services Tax

1. Government Launches ‘Mera Bill Mera Adhikar’ invoice incentive scheme

   The Government of India, in collaboration with State Governments, is introducing the ‘Mera Bill Mera Adhikaar’ Invoice Incentive Scheme from September 1st, 2023. The programs’ goal is to influence the way people think and act so that they see “Ask for Bill” as their right and entitlement. This pilot scheme will run for a period of 12 months. The scheme was aimed at incentivizing consumers to ask for genuine invoices from the seller. Also, few lucky invoices will be picked by a method of random draw at regular intervals for giving rewards.

2. The Indian Sugar Mills Association (ISMA) seeks 5% GST on flex fuel vehicles to be at par with Electric Vehicles

   Sugar industry body ISMA sought a GST rate of 5% which is currently 28% for vehicles using flex fuels, same as that on electric vehicles (EVs) to accelerate adoption of blending of ethanol with petrol as fuel for automobiles. Flex-fuel vehicles (FFVs) use a mix of petrol and ethanol at various degrees. India has achieved E10 (10% ethanol in petrol) and is targeting E20 by 2025.This move will directly contribute to reducing India's fuel bill while simultaneously curbing carbon emissions from the transportation sector, it said.

3. CBIC Extends Due Date for GSTR-3B for quarter ending June, 2023 for Manipur

   Considering the existing law and order situation in the State of Manipur CBIC extends the due dates for filing Form GSTR-1, Form GSTR-3B, and Form GSTR-7 for the months of April, May, June and July 2023 for registered persons whose principal place of business is in the state of Manipur.

4. Advisory for applicants where GST Registration application marked for Biometric-based Aadhaar Authentication

   Rule 8 of CGST Rules had been amended to provide that those applicants who had opted for authentication of Aadhaar number and identified on the common portal, based on data analysis and risk parameters, shall be placed for biometric-based Aadhaar authentication and taking photograph(s) of the applicant.

   Pilot for implementation of the above change is ready and the functionality is ready for roll out by GSTN portal. This functionality is being launched in Puducherry from 30th August, 2023 in the pilot phase. After submission of application in Form GST REG-01 and before generation of ARN, the applicant will either get the message for visiting GST Suvidha Kendra (GSK) or a link on the declared Mobile and Email ID; as may be applicable at TRN stage, based on identification by common portal so that registration process may be completed.

5. Whether benefit of Input tax credit ('ITC') can be given to the recipient, If the supplier has failed to deposit the tax to the ex-chequer despite collecting entire consideration from the recipient?

   The Hon'ble Patna High Court in M/s. Aastha Enterprises v. State of Bihar [CWJ 10395 of 2023 dated August 18, 2023] held that ITC is in the nature of a benefit/concession and not a right extended to the assessee under the statutory scheme. The ITC to purchasing dealer will depend not only upon the collection by the seller but also the due payment by the seller to the Government and the burden of proof lies with the assessee to substantiate that the tax collected has been paid to the government by the supplier.

Re-imagining Reality: AR / VR & Metaverse

Technology is the pre-eminent enabler of functionality within human society in modern times. The advent and advancement of cutting-edge technology has fundamentally changed the way of undertaking tasks and operations.

There has been a spurt of innovations in the area of interfacing the virtual and the real, using Virtual Reality (VR), Augmented Reality (AR) technologies. By presenting reality through technology, they both seek to increase a person's sensory experience.

Augmented reality (AR) is an interactive experience that combines the real world with computer-generated content. AR is a system that incorporates three basic features: a combination of real and virtual worlds, real-time interaction, and accurate 3D registration of virtual and real objects.

AR overlays virtual information in a real world to enhance the user experience.

For instance, let's consider the example of popular open world game- Pokémon Go. Herein, the users explore their actual surroundings (Real World / Real Locations) to seek animated virtual characters scattered across entire world which appear on the mobile devices of users on a real time basis. Through a robust integration of AR technology, the game provides a very comprehensive experience to its users.

Applications of Augmented Reality in various Industries

i. **Defence** – AR is being used to navigate through challenging terrains by eliminating blind spots and providing clear imagery even in the most difficult conditions.

   Indian start-up – **"AjnaLens"** uses mixed reality and AI Technologies in revolutionizing India's Defense Sector.

ii. **Retail -** AR is being used to create real life like 3D experiences in all digital channels for brands across different platforms. It enhances the user experience by ensuring a better product presentation.

Indian Start-up - **"KikSar"** & **"Effie"** provides Virtual try-on for various fashion retail products such as jewellery, eye glasses, clothes, shoes etc.

iii. Education & Research – AR is helping students to master a subject through rich visuals and improved comprehension of subject matter i.e., it incorporates gamification into the curriculum for creating immersive educational material

Indian Start-up - "Invact" provides finance courses and allows students to learn with their peers in a virtual social setting.

Virtual Reality (VR) technology seeks to create a realistic three-dimensional image or environment that a human can perceive as real and even interact with in realistic ways i.e., it is a computer-generated environment with scenes and objects that appear to be real, making the user feel immersed in its surroundings

Virtual reality uses Virtual headsets to create a stimulated environment.

For instance, zero latency VR gun game played using a headset is a virtual reality game where you use a gun-shaped controller in a virtual environment. When you aim and shoot with the VR gun, the game instantly and accurately registers your movements, creating a realistic and thrilling gaming experience.

Applications of Virtual Reality in various Industries

i. **Healthcare** – VR is used in physical therapy under the supervision of an AI virtual instructor who monitors the patient's condition and ensures that the exercises are performed appropriately. Further, VR has enabled surgeons to virtually explore a person's anatomy in a controlled, safe and fully digital environment prior to performing complex procedures in real life.

Indian start-up – "**MediSimVR"** is a startup provides virtual solutions and offers medical students the opportunity to acquire exposure from diverse range of virtual scenarios without the risk of harm done to the patient.

ii. **Entertainment -** VR Concerts allow users from any part of the world to gather and enjoy the performance of their favorite artist- live and with all the bells, whistles and hooting.

It also allows common people to engage in live exhibitions, museums tours, art gallery tours, etc in ways which were never thought of. It allows the person to view 3D images and these images appear life-sized to the person, so the entertainment seems realistic and enjoyable.

Indian Start up - **"RLTY"** has a suite of easy-to-use tools for organizing concerts,

art galleries, conferences, fashion shows, corporate events, etc.

iii. **Automobile -** VR can simulate the experience of driving a car while also enabling car manufacturers to test their cars under any weather conditions and in any location.

Indian Start up - **"AutoVrse"** is a technology start up that builds up virtual reality programs for the automotive industry. These programs allow them to evaluate 3D models at scale, collaborate, and reduce dependency on physical prototypes.

AR/VR devices and applications are able to strategically enable people better understand the perspective of others because the immersive experience gives consumers the feeling of strong presence and association.

Further, the AR / VR technologies are also being widely adapted across various industries in India such as Real estate, Architecture, Interior Design, Tourism, Retail, Entertainment, Education, Sports, Arts and designs, Events & Conferences, Fitness, Marketing etc.

What is Metaverse?

The term "Metaverse" comes from the combination of two terms – "meta" meaning **Beyond** or **Transcending** and "verse" meaning **Universe.** The term was coined for the first time in Neal Stephenson's 1992 science fiction novel Snow Crash.

The origin of Metaverse as a concept goes way back in time. **However, it gained more popularity and relevance with the evolution of technology in form of AR and VR.**

In simplest terms, every application on a mobile phone is a universe in itself. The **imagination** or the **sense to perceive** such Ecosystem or "Universe" explains the "Metaversial Experience". Depending upon how "immersive" the experience gets, the more "meta" (comprehensive) it becomes.

As long as one can transfer the human senses into the virtual world (Universe), such world is a Metaverse.

For instance,

If one wants to get immersed into a lifestyle universe, he/she will log in to Instagram or Facebook to know about the latest fashion trends, good dining locations, famous tourist spots, etc.

If one wants to get immersed into the world of thoughts and opinions, he/she will login to Twitter or Linked-in and get involved in the discussions and debates going around by voicing his/her own opinions to feel associated and involved with the public at large on the platform.

If one wants to get into the world of gaming, he/she will look forward to playing games which will give a sense of thrill and pleasure for being a part of such game and experiencing the "world" in such game.

Therefore, the people have already experienced the Metaverse but the same has been **2-Dimensional** until a very long period of time. **However, we now have the tools and technology to explore a more immersive experience through AR and VR.**

Metaverse development has often been linked to advancing VR technology owing to the increasing demands for immersion. Metaverse in today's world, refers to a digital iteration on the internet, a virtual reality space where users can interact with others in a computer-generated environment.

For example: Instead of browsing through an apparel store or an online shop, the website is transformed into a three-dimensional mall or building where users can interact as in-game characters or "Avatars".

Existing and Emerging Technologies in AR & VR

A. Existing Technologies

i. **On-body and Off-body sensors -** These sensors are used to track and identify users and the objects around them to accurately reflect their limb movements and the physical objects around them in the virtual world. One such example for the same is AR-tech enabled smart watches.

ii. **Haptics -** Haptics devices convey the sense of touch to the user with vibrations to augment virtual experiences. This technology can be seen in

PlayStation 5 controller which is capable of precise vibrations that complement the in-game scenarios.

iii. **Holography -** Holograms are used to display high quality 3D representations that can be seen without using a headset.

B. Emerging Technologies

iv. **Electromyography -** EMG is a neuro technology that detects and records electrical activity from muscles to control movement and manipulate objects in virtual spaces. For example, the wristband introduced by Meta wherein the band catches the neuron signal from the brain for the fingers at the wrist level thereby enabling the movement of objects in the connected virtual world without the actual physical movement.

v. **Microelectromechanical Systems (MEMS) -** MEMS uses mid-air ultrasonic waves to allow users to physically feel tactile experiences without any wearables.

Indian AR / VR / Metaverse Industry & Key Trends

The total Indian market size of AR/VR in India is expected to advance at a CAGR of 38.29% reaching US$ 14.07 billion by 2027.

Further, Metaverse industry in India is expected to grow at an impressive CAGR of 37.1% and touch a whopping $758 billion by 2026

Usage of AR/VR headsets has increased in the consumer segment due to the lower cost of wearables. The hardware segment dominated India's AR and VR segment with 71% share as at FY 20.

Recent Industry Developments

i. Microsoft and Volkswagen formed a partnership to bring AR to cars using Microsoft's HoloLens 2. The car dashboard can display a pedestrian warning at crosswalks and the temperature inside the car.

ii. One of India's leading budget eyewear brands, MyValueVision.com, plans to open 100 franchise stores based on AI and AR/VR.

iii. Krikey, an AR company, has launched Yatra, a new AR game in India in association with Reliance Jio.

iv. BalaAatral solutions, a Chennai-based start-up operating in the gaming industry, has received grants worth US$ 0.41 million (Rs. 3 crore) from the Ministry of Defence to work on two defence start-ups challenges.

v. Flipkart launched "Flipkart Labs" to enhance the e-commerce experience through AR and non-fungible tokens. Reliance Jio invested US$ 15 million in "TWO", a Silicon Valley-based start-up, focused on the AR/VR sector.

Indian AR / VR / Metaverse Start-up Ecosystem

Over the past few years, the number of AR/VR start-ups in India has increased significantly, with many making a name for themselves globally. Some of India's leading AR/VR start-ups include:

Company	Sector	Description
Practically	Education	Practically provides with an edge by making concepts fun and life-like offering 3D videos, simulations/AR modules.
Foyr	Real Estate	VR platform for visualizing real estate spaces.
AjnaLens	Defence	AjnaLens, builds AI-powered wearable technologies to upgrade the skill development ecosystem for the defence industry and various others in India.
TutAR	Education	TutAR provides with an AR platform to help take enhanced sessions with your students using visuals.
EFFE Technologies	Retail	EFFE Technologies is a technology-driven software development company that delivers 3D web and mobile applications, AR and VR Applications, 360 Virtual tour, techno-marketing strategies along with high quality user experiences.
Medisim VR	Healthcare	MediSim VR was established to make comprehensive Virtual Reality medical simulation more accessible and affordable.

Conclusion

Virtual and augmented reality will have a far-reaching impact on our society. Users will be able to, among other things, experience a variety of realities depending on unique preferences and needs. Additionally, it will alter how users participate and increase the capacity of enterprises to communicate with customers. These innovations provide countless potential, and they are extremely potent when used in conjunction with readily available mobile phones.

The majority of AR/VR systems and platforms are still in the nascent stages for both consumer and business use, but as they advance, become more accessible, and become more user-friendly, they might have profound, transformative effects on the way individuals operate, develop, and interact.

While some independent units are already on the market, their implementation is more challenging and complex. Future AR/VR technology will offer individualized, easily accessible, and beautifully designed experiences. There will soon be a platform change when these factors take effect.

This revolution won't happen overnight, but it will start sooner if organisations, governments, and developers of technology take a wide range of user demands into account from the beginning.

The Digital Personal Data Protection Bill, 2023

The Personal Data Protection Bill seeks to lay down laws on processing of personal data by public and private entities. Any information which is related to an identified or identifiable natural person can be considered as a personal data. In 2018 our Indian Personal Data protection bill was drafted on the lines of EU GDPR (General Data Protection Regulation to protect personal data or information which stored, gathered, processed in a manner. After multiple iterations and validations in 2019 and subsequent recommendation of the Joint Parliamentary Committee, the bill has been passed by both Lok and Rajya Sabha in August -23.

Highlights of the Bill

- The Bill will apply to the processing of digital personal data within India where such data is collected online, or collected offline and is digitized. It will also apply to such processing outside India, if it is for offering goods or services in India.
- Personal data may be processed only for a lawful purpose upon consent of an individual.
- Consent may not be required for specified legitimate uses such as voluntary sharing of data by the individual or processing by the State for permits, licenses, benefits, and services.
- Data fiduciaries or subject will be required to maintain the accuracy of data, keep data secure, and delete data once its purpose has been met.
- The Bill grants certain rights to individuals including the right to obtain information, seek correction and erasure, and grievance redressal.
- Government agencies may be exempted from the application of provisions of the Bill in the interest of specified grounds such as security of the state, public order, and prevention of offences.
- Data Protection Board of India will be established to adjudicate on noncompliance with the provisions of the Bill

For more detail refer **Click here**.

Compliance Calendar for Sept. 23

A. Income Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	7th Sept	August 2023	TDS / TCS Payment	Non-Government Deductors
2.	15th Sept	August 2023	Provident Fund (PF) and Employee State Insurance Corporation (ESIC) Returns and Payment	All deductors
3.	15th Sept	Qtr. 2 (F.Y 23-24)	Advance tax payment	All Assessee
4.	30th Sept	August 2023	TDS Payment in Form 26QB (Property), Form 26QC (Rent), Form 26QD (Contractor Payment)	Non-Government deductors
5.	30th Sept	FY 2022-23	Filing the Income Tax Audit Report (other than Transfer pricing audit)	For All taxpayers to whom tax audit is applicable

Notes:

1. CBDT extends vide Circular No 9/2023 the due dates:
   A. TDS statement in Form 26Q & 27Q for the period Apr-June 23 is extended from 31st July 2023 to 30th September 2023
   B. TCS statement in Form 27EQ for the period Apr-June 23 is extended from 15th July 2023 to 30th September 2023

B. Goods and Service Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	10th Sept.	August 23	GSTR – 7 (TDS)	Person required to deduct TDS under GST
2.	10th Sept.	August 23	GSTR – 8 (TCS)	Person required to collect TCS under GST
3.	11th Sept.	August 23	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
				b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
4.	13th Sept.	August 23	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
5.	13th Sept.	August 23	GSTR – 6 (ISD)	Person registered as ISD
6.	20th Sept.	August 23	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme
7.	13th Sept.	August 23	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
8.	20th Sept.	August 23	GSTR - 5A (OIDAR)	OIDAR services provider
9.	25th Sept.	August 23	GSTR – 3B - QRMP scheme- Monthly payment*	Aggregate Turnover is up to Rs. 5 crores

* Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), option having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -1 states

Source: GST Portal

C. FEMA Compliance

Sr No.	Due Dates	Particulars	Applicable to
1.	7th Sept.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders
2.	30th Sept.	Form FLAIR return based audited financials (Annual Return)	Indian Companies and LLP regarding to Foreign asset and liabilities

D. Ministry of Corporate Affairs (MCA) Compliance

Sr No.	Due Dates	Particulars	Applicable to
1.	30th Sept.	Annual General Meeting	For all Companies
2.	30th Sept.	Form DIR-3 KYC to be completed for Directors	All the directors

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

Bhuta Shah & Co LLP (BSC) is a dynamic professional Chartered Accountants firm with a distinctive blend of skill sets, experience and expertise. Established in the year 1986, we operate from our Head Office in Nariman Point, Mumbai while having 6 offices across India in Mumbai, Pune, Ahmedabad and New Delhi.

We offer our clients a wide range of services including Audit & Assurance, Direct Taxation, Indirect Taxation, Transaction Advisory, Corporate Finance, Corporate Advisory, Risk Advisory, Cyber Security and Resolution & Insolvency Advisory.

We provide services to a diverse set of leading Indian and Multinational Clients, including FPIs, Mutual Funds, Large Banks, Broking Institutions, Listed Companies including Pharmaceutical Companies, Manufacturing Companies, Insurance Companies, Realty Companies, Jewellery Companies, Hospitals and several other Large and Medium Businesses.

Our forte is high quality services to our clients based on the core principles of Quality, Focus, Timeliness and Commitment.

The Leadership Team comes with rich experience and is supported by a competent and efficient team of Professionals including Chartered Accountants, Professionals with Big-4 Consulting and Industry experience, Advocates, Company Secretaries, MBAs, Former IRS Officers, who are committed to providing timely, professional and quality services to our clients.

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