BHUTA
SHAH
& CO
LLP

CHARTERED
ACCOUNTANTS

BSC
BEACON

Tax & Regulatory Insights

DECEMBER 2023

Table of Contents

Glossary **01**

I. Direct Taxes 02

A. Corporate Taxes 02

1. **Hon'ble SC:** Foreign exchange fluctuation gain in Exchange Earners Foreign Currency (EEFC) account of a 100% Export Oriented Unit (EOU) is not eligible for export incentive under section 80HHC of the Act. 02
2. **Hon'ble Delhi HC:** Reassessment proceedings for AY 2011-12 quashed on the basis that the matter under consideration was analysed during scrutiny assessment and reassessment was initiated on account of change of opinion by the assessing officer. 03
3. **Hon'ble Delhi HC:** Deductee has a right to claim Tax at Source (TAS) credit even if it is not reflected in the Form 26AS and deductor is undergoing Corporate Insolvency Resolution Process (CIRP). Deductee needs to be pre-emptive in lodging the claim with RP and recovery of TAS would be deposited with Revenue authorities. 05
4. **Hon'ble Delhi HC:** Set aside the order of assessing officer on failure to follow the directions of Dispute Resolution Panel (DRP) even though the assessee failed to intimate the assessing officer about filling of the objections with the DRP. 06
5. **Hon'ble Delhi HC:** The Assessing Officer is obligated to stay the balance outstanding disputed demand created by Assessment Order, if 20% of the said demand has been adjusted against the refund claimed by Assessee. 08
6. **Hon'ble Bombay HC:** Quashes reassessment order for AY 2016-17 as the transfer of leasehold rights offered to tax in subsequent AY and accepted by the tax authorities in the subsequent AY. 09
7. **Hon'ble Jharkhand HC:** Notice under Section 148 of the Act for AY 2013-14 not time-barred despite search in AY 2023-24. 10
8. **Hon'ble Bangalore ITAT:** Without a specific mention of the amended provision to operate retrospectively, no cancellation for the earlier years could be made under Section 12AB(4)(ii) of the Act. 11

9. **Hon'ble Bangalore ITAT:** Income earned from interest on Non-Convertible Debentures, incentives from Airline, and insurance claim, etc., are not considered eligible profits from business of SEZ units and thus not exempted under Section 10AA of the Act. Further, business of software development being an activity of a service sector industry are not eligible for deduction under Section 32AC of the Act. 13

10. **Hon'ble Mumbai ITAT:** Explains allowability of exemption under Section 11 of the Act for Assessee registered under Section 12A of the Act in light of Hon'ble Supreme Court Judgment of Ahmedabad Urban Development Authority. 15

B. International Tax **16**

1. **Hon'ble Delhi HC:** Domain name registration charges are not in the nature of royalty under Section 9(1)(vi) of the Act. 16
2. **Hon'ble Mumbai ITAT:** Observes 0.5% cannot be standard rate for charging corporate guarantee commission. 18
3. **Hon'ble Mumbai ITAT:** Holds counter (corporate) guarantee covered under Section 92B, rejects TPO's CUP for benchmarking export transaction. 19
4. **Hon'ble Mumbai ITAT:** Treats redeemable, Non-Convertible Cumulative Redeemable Preference Shares ('NCCRPS') as 'quasi capital', benchmarks basis LIBOR. 20
5. **Hon'ble Mumbai ITAT:** The date on which the order is digitally signed by the competent authority is the date of the order. Thus, period of limitation will be examined with reference to the date of signing of the order. 22

II. Goods and Services Tax 24

1. Revision of time limit for issuance of order 24
2. Date extension for reporting opening balance for ITC reversal 24
3. Addition of new tables in FORM GSTR-1 starting from January 2024 onwards 24

III. CBDT Circulars and Notification 26

1. CBDT extends the relaxation limit for processing of return of income for AY 2018-19 to AY 2020-21. 26
2. CBDT prescribes Guidelines regarding provision of Section 194-O (4) of the Act. 27

IV. Accounting, Audit and Assurance 29

1. Overview of the EAC opinion – Delayed Payment Charges on the basis of number of days of delay. 29
2. Accounting Implications of ESOP Exercise Price Revision: Expert Advisory Committee Opinion. 31

V. Decoding the impact of change in risk weight asset for Consumer Credit 33

VI. Compliance Calendar for the month of January 2024 36

Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
AO	Assessing officer
AE	Associate Enterprise
AY	Assessment Year
CIT	Commissioner of Income-tax
CIRP	Corporate Insolvency Resolution Process
CPC	Centralized Processing Center
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CBDT	Central Board of Direct Taxes
DRP	Dispute Resolution Panel
DCIT	Deputy Commissioner of Income Tax
EEFC	Exchange Earners Foreign Currency
FY	Financial Year
HC	High Court
Hon	Hon'ble
ITAT	Income Tax Appellate Tribunal
NFAC	National Faceless Assessment Centre
PY	Previous Year
PCIT	Principal Commissioner of Income Tax
PCCIT	Principal Chief Commissioner of Income Tax
SEZ	Special Economic Zone
SC	Supreme Court
TPO	Transfer Pricing Officer

I. Direct Taxes

A. Corporate Taxes

1. **Hon'ble Supreme Court[1]:** *Foreign exchange fluctuation gain in Exchange Earners Foreign Currency (EEFC) account of a 100% Export Oriented Unit (EOU) is not eligible for export incentive under Section 80HHC of the Act.*

Background

During the AY 2000-01, the Assessee export turnover included an amount attributed to gains on account of fluctuation in foreign currency credited to the EEFC account. The Assessee treated this receipt as income earned in the course of exporting goods categorizing it as profits of business from exports outside India and claimed deduction under Section 80HHC of the Act.

The Assessee adopted a position that EEFC is an enabling account for an exporter of the categories covered by the Reserve Bank of India (RBI) notification FERA.159/94-RB dated 01.03.1994. The account holders are authorised to meet their overseas financial commitments from the foreign exchange credited in their EEFC account.

However, the income-tax authorities argued that the gains from foreign exchange fluctuation in the EEFC account cannot be attributed as an earning from the export of goods/merchandise outside India and thus deduction on such amount cannot be availed under Section 80HHC of the Act. The Tax authorities also argued that the notification permitted foreign exchange earners to open an EEFC account by crediting a percentage of foreign exchange into the account. The maintenance of an EEFC account was not mandatory to the export activity of the Assessee.

The matter travelled up to the Hon'ble Supreme Court.

[1] Shah Originals vs. CIT [TS-690-SC-2023]

Judgement of Hon'ble Supreme Court

The Hon'ble Supreme Court held that profit from exchange fluctuation is independent of export earnings, and should be excluded when computing deduction under profits under Section 80HHC of the Act. While deciding the matter, the Hon'ble Supreme Court made the following observations:

a) Opening and maintaining an EEFC account is not a mandatory requirement for export business or earning profits in the business of export outside India. Had the gain been on account of any statutory scheme, the ratio of its decision in the case of Topman Exports[2] would have attracted and applied.

b) The expressions 'derived from' and 'since' are used in multiple instances in the Act. It has been held by the Supreme Court and other HCs that unless the context permits, the construction of the expression 'derived from' must be consistent. It has been held that for a deduction to be claimed as profits of a business, the income or profit must be directly derived from the export of goods or merchandise.

c) The interpretation suggested by the Assessee would add one more source to the sources stated in Section 80HHC of the Act. Such a course is impermissible. The strict interpretation is in line with a few relative words, namely, manufacturer, exporter, purchaser of goods, etc. adverted to in Section 80HHC of the Act. Therefore, including other income as an eligible deduction would be counter-productive to the scope, purpose, and object of Section 80HHC of the Act.

2. **Hon'ble Delhi HC[3]:** *Reassessment proceedings for AY 2011-12 quashed on the basis that the matter under consideration was analysed during scrutiny assessment and reassessment was initiated on account of change of opinion by the assessing officer.*

Background

The Assessee is engaged in the real estate business (i.e., business of buying, selling, and developing properties). During the AY 2011-12, it sold land for INR 1.51 Cr and reported the same in its return of income. The same was subsequently subjected to scrutiny. During the scrutiny assessment, the Assessee contended that the funds for purchase of the said land were provided by a group company named Shourya Towers Pvt. Ltd (STPL) and this arrangement was a subject matter of Memorandum of Understanding (MOU) entered between STPL and the Assessee. Capital gain on

[2] Topman Exports vs. Commissioner of Income Tax, Mumbai, 2012 (3) SCC 593

[3] Shourya Infrastructure Pvt. Ltd. vs. Income Tax Officer [TS-732-HC-2023][DEL]

the sale of land after claiming payment made to STPL as expense was offered to tax by the Assessee. The assessing officer completed scrutiny assessment proceedings without making any addition.

Later on, the assessing officer issued a notice under Section 148 of the Act to the Assessee on the grounds that the sale of land was a capital account transaction and therefore provisions of Section 50C of the Act would be applicable. The assessing officer computed the capital gain by adjusting the sale consideration against the value of the land arrived at based on the circle rate.

The Assessee contended that as it is in business of real estate, land under consideration was stock-in-trade for the Assessee and therefore, provision of Section 50C of the Act is not applicable. Further, the gains received by the Assessee was offered to tax. The relevant facts of the transaction were in the assessment records. Accordingly, the case was reopened merely on account of change of opinion of the assessing officer regarding the nature of transaction as well as applicability of provisions of Section 50 of the Act.

The Assessee also claimed that since the assessment was re-opened after four years from the end of relevant assessment year, as per the first proviso to Section 147 of the Act, a case had to be made out that there was a failure on the part of Assessee to disclose fully and truly all material facts which were relevant for assessment.

The assessing officer alleged that the arrangement constituted a sham transaction by placing reliance on the judgment rendered by Hon'ble Supreme Court in case of Phool Chand Bajranglal V. ITO and the Assessee had shown the nominal amount received as profit, which was set off against its losses, resulting in revenue loss. He maintained that during scrutiny assessment, the arrangement was not examined from the perspective of it being a sham transaction and that the approving authorities had applied their mind before approving the initiation of reassessment proceedings. He rejected the Assessee's claim of change of opinion on the basis that an opinion was not expressed on the matter in question during the scrutiny assessment.

Judgement of Hon'ble Delhi HC

The Hon'ble Delhi HC quashed the reassessment proceedings on the following grounds:

a) The assessing officer did not allege that the Assessee had failed to disclose fully and truly all material facts which were necessary for carrying out the assessment. It cannot be said that the subject transaction was not scrutinized by the assessing officer.

b) It is a well-known fact that tax officers issue questionnaires, seek answers to their queries and if satisfied, may decide to accept the explanation and consequently, the return. Therefore, this was a case of change in opinion.

c) The Court observed that in case of Phool Chand Bajranglal vs. ITO, it was a case where AO sought to draw fresh inference, based on the material placed before him that case exposed the falsity of the statement made on behalf of the assesse when original assessment order was framed. Accordingly, the Hon'ble HC distinguished the present case from Phool Chand Bajranglal vs. ITO[4] relied upon by the assessing officer and held that the reassessment was unwarranted. The Hon'ble HC emphasized that the circumstances leading to the reopening did not support drawing fresh inferences and concluded that the proceedings lacked merit.

3. **Hon'ble Delhi HC[5]:** *Deductee has a right to claim Tax at Source (TAS) credit even if it is not reflected in the Form 26AS and deductor is undergoing Corporate Insolvency Resolution Process (CIRP). Deductee needs to be pre-emptive in lodging the claim with RP and recovery of TAS would be deposited with Revenue authorities.*

Background

Before the Hon'ble Delhi HC, the Assessee challenged the order dated 25.06.2020 passed under Section 154 of the Act for AY 2019-20 rejecting the rectification application filed by the Assessee to claim TAS amounting to INR 29,16,674 on the interest received from its borrower, Ninex Developers Ltd.

The borrower / deductor was undergoing a Corporate Insolvency Resolution Process (CIRP) and the Resolution Professional issued a certificate evidencing that TAS amounting to INR 26,99,950 had been deducted on the interest paid to the Assessee. Accordingly, the Assessee sought the claim with respect to TAS.

[4] Phool Chand Bajranglal vs. ITO 203 ITR 456 (SC)

[5] BDR Finvest Pvt Ltd vs. DCIT [TS-697-HC-2023-DEL]

However, the tax authorities disallowed the claim on the ground that no credit for TAS can be given unless the same is paid to the Central Government having regard to the provisions of Section 199 of the Act.

The Assessee filed a writ petition before the Hon'ble Delhi HC seeking a direction for allowing credit of INR 29,16,674 for the TDS deducted by Ninex.

Judgement of the Hon'ble Delhi HC

The Hon'ble Delhi HC ruled that Section 199 of the Act cannot come in the way for granting credit of TAS by Ninex to the deductee. Accordingly, the Assessee would be eligible to claim TAS credit even though the same is not reflected in the Form 26AS.

The Hon'ble Delhi HC relied on its own judgement in the case of Sanjay Sudan v. ACIT (Delhi)[6] wherein it was held that by virtue of Section 205 of the Act, the Assessee cannot be subjected to recovery of the tax amount (which is already included in the gross income) deducted by a deductor (agent of the government for collecting tax) if the said agent fails to deposit the same with the Central Government. The deductor / agent should be subjected to measures of recovery and not the Assessee.

Further, the Hon'ble Delhi HC held that if the Assessee is denied the credit of TDS and tax authorities adjust the refund against the demand, the tax authorities would indirectly be taking recovery measures against the Assessee which is not the legislative intent under Section 205 of the Act.

4. ***Hon'ble Delhi HC[7]:*** *Set aside the order of assessing officer on failure to follow the directions of Dispute Resolution Panel (DRP) even though the assesse failed to intimate the assessing officer about filling of the objections with the DRP.*

Background

The Assessing officer passed a draft assessment order on 26.09.2023 for AY 2020-

[6] Sanjay Sudan v. ACIT [148 taxmann.com 329 (Delhi)]
[7] Pepsico India Holding Pvt Ltd vs. Assessment Unit NFAC [TS-730-HC-2023-DEL]

21 in the case of Pepsico India Holdings Pvt. Ltd. (Pepsico) against which Pepsico filed its objection on 20.10.2023 as per Section 144C(2)(b) of the Act. However, Pepsico failed to intimate the same to the Ld. AO. The AO passed the final assessment order under Section 143(3) r.w.s.144C(4) of the Act on 21.11.2023 without considering the objections filed by the Pepsico. Aggrieved by the same, Pepsico filed a writ petition before the Hon'ble Delhi HC on the grounds that it has filed its objection before the DRP and therefore, the final assessment order shouldn't have been passed by the AO before the DRP issues its direction.

Pepsico placed its reliance on the decision of the Hon'ble Bombay HC in the case of Sulzer Pumps India Pvt. Ltd. Vs DCIT (2021) (HC) and various other HC decisions wherein the final assessment order passed without waiting for the directions issued by DRP was set aside.

On the other hand, the tax authorities contented that Pepsico was required to file copy of objection with the AO and as Pepsico failed to file a copy of such objection filed before the DRP, AO was well within its rights to pass final Assessment order and was obligated to complete the assessment as per the draft assessment order.

Judgement of Hon'ble Delhi HC:

Hon'ble Delhi HC relied on the decision passed by the Hon'ble Bombay HC in the case of Sulzer Pumps thereby directing that the final assessment order should be passed by the AO after considering the directions issued by the DRP, and no prejudice will be caused to the tax authorities if the petition is allowed. Accordingly, the writ petition is allowed, and the final assessment order with all subsequent notices were set aside.

5. *Hon'ble Delhi HC[8]: The Assessing Officer is obligated to stay the balance outstanding disputed demand created by Assessment Order, if 20% of the said demand has been adjusted against the refund claimed by Assessee.*

Background

The Assessee received an Assessment Order under Section 143(3) of the Act for AY 2017-18 wherein demand of INR 36,69,10,379 was determined to be payable on account of various disallowances made in the said order. The Assessee preferred an appeal against the said Assessment Order before the Ld. CIT(A). The Revenue adjusted the entire refund for AY 2017-18 as claimed in tax return against the demand determined in the Assessment Order. Being aggrieved by this adjustment, the Assessee filed a writ petition before the Hon'ble Delhi HC contending that entire refund should not have been adjusted by the Tax authorities in view of the Office Memorandum (OM) issued by the Hon'ble CBDT.

Judgment of Hon'ble Delhi HC

After considering the submissions made by Assessee, the Hon'ble Delhi HC relying on the OM - F. No.404/72/93-ITCC dated 29.02.2016 and updated OM dated 31.07.2017 issued by the Hon'ble CBDT, made the following observations:

1. In accordance with the OM, the Assessing Officer has to grant stay on tax demand till the disposal of appeal on deposit of certain percentage of disputed demand (i.e., 20% as per OM dated 31.07.2017).

2. Since the Revenue has adjusted the disputed demand against the pending income-tax refund, the quantum of 20% of disputed demand has been discharged by the Assessee.

In view of the above, the Hon'ble Delhi HC directed the Assessing Officer to release the amount of income-tax refund in excess of 20% of the total demand as per the Assessment Order.

[8] FIS Payment Solutions & Services India Private Limited Vs. DCIT [W. P (C) 2162/2020 dated 24 November 2023]

6. ***Hon'ble Bombay HC[9]:*** *Quashes reassessment order for AY 2016-17 as the transfer of leasehold rights offered to tax in subsequent AY and accepted by the tax authorities in the subsequent AY.*

Background

Peoples Education Society, Thane ("PES"), a charitable trust, began construction of a new school building within its existing premises to further various educational activities carried out by it. PES entered into a build lease and transfer agreement with Global Edu-Infra Development Private Limited (the "Developer") on 06.08.2015, granting leasehold rights of a portion of the newly constructed premises for 45 years. PES retained ownership of the land and all buildings.

The construction of new building/redevelopment of old building was completed during AY 2018-19 at an approximately cost of INR 43 crores to the developer. PES considered the said amount as consideration for transfer of leasehold rights to the developer in the form of new school buildings. PES has also shown this as an application of income under Section 11 of the Act. During the scrutiny proceedings of AY 2018-19, a show-cause notice was issued seeking an explanation from PES for claiming deduction as an application of income (of INR 43 crores) which is equal to the income offered to tax. Detailed reply filed by PES to the said notices was duly accepted by the assessing officer and subsequently, an assessment order was passed under Section 143(3) read with Section 144B of the Act dated 27.08.2021 accepting the return of income after a detailed examination.

Thereafter, a notice under Section 148 of the Act dated 31.03.2021 was issued for AY 2016-17 alleging that there was escapement of income of PES. In the reasons for reopening, the assessing officer mentioned that the transfer of leasehold property rights (sale) took place on 06.08.2015 but was not offered to tax in AY 2016-17.

PES filed its objections to reopening of assessment by contesting that it has already accounted for the income on its own and in the subsequent AY i.e. AY 2018-19, eliminating any escapement of income for the said AY. The objections were rejected by an order dated 13.01.2022, against which PES preferred a writ petition before the Hon'ble Bombay HC.

In an affidavit filed on 30.05.2022, the tax authorities stated that the assessment for the AY 2018-19 concluded on 27.08.2021, whereas the notice under Section 148 of the Act for AY 2016-17 had been issued on 31.03.2021, thereby accepting the fact that the assessment for AY 2018-19 was completed during the pendency of

[9] Peoples Education Society Thane vs ACIT [TS-720-HC-2023-Bom]

reassessment proceedings for AY 2016-17.

Judgement of Hon'ble Bombay HC

The Hon'ble Bombay HC observed that if an income is offered to tax in subsequent AY and the assessment order for the said year has been passed accepting the same, then there should not be any question regarding the escapement of income of the same amount in the previous AY.

Since the said amount was already taxed in the subsequent years (i.e. AY 2018-19) and there is no change in the rates of tax, no benefit was claimed by PES by considering the income for taxation in the later AY.

Thus, the Hon'ble Bombay HC allowed the petition stating that the notice issued under Section 148 of the Act was bad in law and also the order disposing of the objections raised by the Assessee was bad in law.

*7. **Hon'ble Jharkhand HC[10]:** Notice under Section 148 of the Act for AY 2013-14 not time-barred despite search in AY 2023-24.*

Background

Notices under Section 148 of the Act for AY 2013-14 were issued to Mr. Naresh Kumar Kejriwal, a Chartered Accountant and M/s. Devika Constructions and Developers Pvt. Ltd, a company, engaged in the construction business. These notices were based on search and seizure conducted on the business premises of Mr. Naresh Kumar Kejriwal on 09.06.2022. Pertinently, Devika Constructions was only subjected to survey under Section 133A of the Act. Both Assessees, Mr. Naresh Kumar Kejriwal and Devika Constructions Pvt. Ltd., have jointly challenged the jurisdiction for the issuance of notices under Section 148 of the Act. Further, they have contended that subsequent retrospective amendment to Section 149 of the Act cannot revive the period of limitation that has already been lapsed. The reassessment proceedings are time barred by limitation as per Section 149 of the Act. Question under consideration

[9] Devika Construction and Developers Pvt Ltd vs. PCCIT [TS-739-HC-2023-JHAR]

was whether in the facts and circumstances of these cases, with the amendment brought in by Finance Act 2021, the notices issued to the respective Assessees under Section 148 of the Act for the Assessment Year 2013-14 is/are beyond time limit to issue such notices.

Judgement of Hon'ble Jharkhand HC

The Hon'ble Jharkhand HC observed that where a search is initiated after 01.04.2021 reassessment is required to be conducted as per the provisions contained in Sections 148, 149 and 151; However, Section 148A of the Act is not applicable in this case as information emanated from searched party and materials/documents pertained to/relates to the both Assessee i.e., where the search is conducted and against the 3rd person whose documents have been seized which goes to show that the information and the documents forms an asset and beyond 50 Lakh.

The Hon'ble Jharkhand HC relied on the Explanation 1 of Section 153A of the Act which explains the expression of "relevant assessment year" to mean the assessment year preceding the assessment year relevant to the previous year in which a search is conducted or requisition is made. This period extends beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which the search is conducted or requisition is made.

In the specific context of the instant case, the Hon'ble Jharkhand HC held that where the search was conducted on 09.06.22, falling within the financial year 2022-23, corresponding to assessment year 2023-24, the assessing officer was correct in issuing notices under Section 148 of the Act for the assessment year 2013-14. This conclusion applied to both Mr. Naresh Kumar Kejriwal and M/s. Devika Constructions Pvt. Ltd.

8. Hon'ble Bangalore ITAT[11]: *Without a specific mention of the amended provision to operate retrospectively, no cancellation for the earlier years could be made under Section 12AB(4)(ii) of the Act.*

Background

M/s. Amala Jyothi Vidya Kendra Trust and M/s. Adarsh Vidya Kendra Trust ('the Trusts") are based in Bengaluru registered under Section 12AA / 12AB of the Act w.e.f. 01.04.2021 for AY 2022-23 to 2026-27.

A search under Section 132 of the Act was conducted on 18.12.2021 in the office

[11] M/s. Amala Jyothi Vidya Kendra Trust vs. PCIT [TS-744-ITAT-2023-BANG]

premises of both the Trusts. Based on the materials obtained during the search, assessment proceedings for AY 2021-22 were initiated. During the assessment proceedings, the AO sent a reference as per the second proviso to Section 143(3) of the Act in both the cases, communicating her satisfaction for violations contemplated in Explanation (a) & Explanation (e) below the provisions of Section 12AB(4) of the Act. Accordingly, show-cause notices were issued requiring the Trusts to explain as to why the registration granted by the Director Income Tax (E) Bengaluru in both cases should not be cancelled.

After considering the reply in both cases, the PCIT cancelled the registration granted to these Assessee under Section 12AA/12AB of the Act w.e.f. AY 2021-22 and onwards as per provisions under Section 12AB(4)(ii) of the Act.

The Assessees filed appeal before the Hon'ble Bangalore ITAT challenging the order of the PCIT on various grounds including that the PCIT has cancelled the registration from AY 2021-22 onwards by invoking provisions of Section 12AB(4)(ii) of the Act which were introduced by Finance Act 2022 applicable from AY 2022-23 and hence, the same is bad in law. The tax authorities adopted a position that the PCIT has passed the order on 12.05.2023 by applying the provisions of Section 12AB (4) of the Act as it stood on that date and therefore the said action is valid.

Decision of Hon'ble Bangalore ITAT

The Hon'ble Bangalore ITAT observed that cancellation of registration is penal in nature and therefore the provisions applicable for the year in which the alleged infringement occurred ought to be considered. The Hon'ble Bangalore ITAT held that without a specific mention of the amended provisions to operate retrospectively, no cancellation for the earlier years could be made.

The Hon'ble Bangalore ITAT has placed reliance on the judgement of Hon'ble Madras HC in the case of Auro Lab Ltd. Vs. ITO[12] wherein it was held that that the amendment to Section 12AA(3) of the Act is prospective and not retrospective in nature. Applying the same ratio, the orders of PCIT passed under Section 12AB(4)(ii) of the Act cancelling the registration were quashed.

[12] Auro Lab Ltd. Vs. ITO [411 ITR 308 (Mad)]

9. Hon'ble Bangalore ITAT[13]: Income earned from interest on Non-Convertible Debentures, incentives from Airline, and insurance claim, etc., are not considered eligible profits from business of SEZ units and thus not exempted under Section 10AA of the Act. Further, business of software development being an activity of a service sector industry are not eligible for deduction under Section 32AC of the Act.

Background

Infosys Limited (Assessee), being a company engaged in the business of software development, has filed its revised return of income for AY 2017-18 on 13.03.2019 which was processed and the intimation under Section 143(1) of the Act was issued on 23.09.2019 thereby disallowing the deduction under Section 10AA of the Act in respect of certain incomes such as interest incomes from Non-convertible Debentures (NCDs), incentives from Airlines, insurance claim and deduction under Section 32AC of the Act. Aggrieved by the intimation the Assessee filed an appeal before the CIT(A) on 04.09.2020 which was pending till disposal of this appeal.

Subsequently, assessment proceedings were initiated and notice under Section 143(2) of the Act was issued.

Thereafter, the Ld. Assessing Officer concluded the assessment proceedings and passed the Assessment Order wherein (a) the deduction under Section 10AA of the Act in respect of other incomes such as interest income, incentives from airlines, net realization on exchange gains on forward contracts, insurance claim received in respect of flood in Chennai during the FY 2016-17, and (b) deduction under Section 32AC of the Act, are disallowed.

The Assessee preferred an appeal before the CIT(A). However, the CIT(A) upheld the order passed by the Ld. Assessing Officer. Aggrieved by the order passed by CIT(A) the Assessee preferred an appeal before the Hon'ble Bangalore ITAT.

Assessee contended that interest on loans to subsidiaries and advancement of loans to subsidiaries were in the nature of business income. Similarly, the Assessee also submitted note on nexus between incomes by way of Interest on NCDs, Incentives from Airline, and Insurance claim, etc., and the business of SEZ and therefore contended that such incomes were eligible for deduction under Section 10AA of the Act.

Further, with respect to claim of deduction under Section 32AC of the Act, the Assessee relied on the ruling of the Hon'ble Bangalore ITAT in its own case[14] and the

[13] M/s. Infosys Ltd vs. DCIT [TS-726-ITAT-2023-Bang]
[14] ITA Nos 125& 126/ Bang/2019

decisions of Texas Instruments India P Ltd v ACIT[15], wherein the additional depreciation was allowed for the new plant and machinery which was used for testing process, and it was held that new machinery or plant is not required to be used in manufacture or production of any article or thing to claim such deduction. Further, the Assessee also contented that 4% of its income was derived from sale of software products and thus the claim under Section 32AC of the Act should be allowed.

The Tax Authorities placed reliance on the judgment of Hon'ble Supreme Court in case of CIT Vs. Sterling Foods[16] wherein it was held that income earned should not be incidental to the business but should be derived from the business and that there should be direct nexus between income earned and the business for claiming deduction under Section 80IA/ 80IB of the Act. Therefore, profits and gains should be inseparable and directly emanate from business. It is also contended that all the above incomes were offered to tax under the head income from other sources.

Further, the tax authorities contended that decision of Hon'ble Bangalore ITAT and others in the context of deduction under Section 32AC of the Act are not applicable in the instant case since it is nowhere specified that software development activity is covered under manufacturing. The business of software development is not covered under the term manufacture under Section 2(29BA) of the Act and the deduction under Section 32AC of the Act is available only to manufacturing sectors and not to service sectors.

Decision of Hon'ble Bangalore ITAT

The Hon'ble Bangalore ITAT relied on the Hon'ble Supreme Court ruling in case of Sterling Foods to hold that incomes should not be incidental to the business and the income should emanate directly from the business itself. Consequently, incomes by way of interest incomes from Non-convertible Debentures (NCDs), incentives from Airlines, insurance claim, etc. are not directly connected with the business of the Assessee and also cannot be treated as inseparable from the main business carried out by the Assessee. It also stated that language used in Section 80IA and 10AA of the Act are in parimateria and thus the same principle is applicable for claiming benefit under Section 10AA of the Act. Therefore, the above-mentioned incomes earned by the Assessee is not eligible for deduction under Section 10AA of the Act.

Further, the Hon'ble Bangalore ITAT relying on the ruling in Assessee's own case for AY 2014-15 and disallowed the deduction under Section 32AC of the Act on the basis that benefit of deduction under Section 32AC of the Act is available only to the manufacturing sector and not to the service sector.

---

[15] Texas Instruments India P Ltd v ACIT [183 ITR 7 (Ban ITAT)]

[16] CIT Vs. Sterling Foods [237 ITR 579 (SC)]

10. **Hon'ble Mumbai ITAT[17]:** *Explains allowability of exemption under Section 11 of the Act for Assessee registered under Section 12A of the Act in light of Hon'ble Supreme Court Judgment of Ahmedabad Urban Development Authority.*

Background

The Assessee is an entity registered under Section 12A / 12AB of the Act. It is also registered under Section 25 of the Companies Act, 1956. It is primarily engaged in conducting surveys / research into readership, viewership and listenership of media and dissemination of research to various members and non-members. It outsources research to outside agencies for Indian Readership Survey reports and sold such reports to subscribers' members and non-members. The Assessee has declared its total income at Nil and claimed exemption under Section 11 of the Act. The Assessing Officer denied the benefit of exemption under Section 11 of the Act on the basis that aggregate value of receipts from its activities exceeds INR 10 Lakhs (for AY 2009-10) and assessed the income as taxable income. On appeal, the CIT(A) confirmed the view of Assessing Officer. Aggrieved by the order of CIT(A), the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT following the judgment of Hon'ble Supreme Court in case of Ahmedabad Urban Development Authority held as under:

1. Since the concept of pure charity is not envisioned under the Act, the activities which are considered to be in line with the general public utility object are granted exemption even if it generates marginal profits and subject to quantitative limits fixed under the proviso to Section 2(15) of the Act. That is, if charity involves itself in any activities that entail charging amounts only at cost or marginal markup over cost and thereby derives profits, then such receipts should not exceed 20% of aggregate gross receipts.

[17] Media Research Users Council Vs. ADIT [TS-763-ITAT-2023 (Mum)]

2. Hon'ble Mumbai ITAT rejects the contention of Revenue and the CIT(A) that merely because the gross receipts surpassed the amount of INR 10 Lakhs (AY 2009-10) as stated in the proviso, the benefit of exemption under Section 11 of the Act cannot be granted.
3. Further, the Hon'ble Mumbai ITAT did not accept the plea of the Assessee that activities from members should be treated as general public utility and only nominal revenue from non-members should be treated as activity in nature of trade, commerce or business. It remarked that even if the same activities are with the members, what is required to be seen is whether the activity per se is in nature of trade, commerce or business.
4. Hon'ble Mumbai ITAT observed that the marginal revenues received from non-members does not mean that entire activities of the Assessee falls within the ambit of principle of mutuality. Therefore, the Hon'ble Mumbai ITAT remanded the issue of mutuality to the AO to re-examine it in light of Hon'ble Supreme Court judgment.
5. As the category of activities undertaken by the Assessee from which revenue is generated is not discussed at the assessment level – i.e., whether such activities falls within the gamut of main provision of Section 2(15) of the Act or hit by the proviso, the Hon'ble Mumbai ITAT remanded back the matter to the Assessing Officer (AO) for re-examination.

B. International Taxation and Transfer Pricing

*1. **Hon'ble Delhi HC[18]:** Domain name registration charges are not in the nature of royalty under Section 9(1)(vi) of the Act.*

Background

The Assessee is a US-based company and one of the accredited registrars for ICANN (Internet Corporation for Assigned Names and Numbers). It provides services such as domain name registration, website design, and web hosting.

The assessing officer made addition to the income for the domain name registration services construing the same as royalty under Section 9(1)(vi) of the Act. The Dispute Resolution Panel and the Hon'ble Delhi ITAT upheld the assessing officer's view. The Hon'ble Delhi ITAT relied on the decision of the Supreme Court in the case of Satyam Infoway Ltd.[19] and the co-ordinate bench decision in the case of Tata Sons[20] and held

[18] ACIT (International Taxation) vs. Godaddy.com LLC, USA [TS-755-HC-2023-Delhi]
[19] Satyam Infoway vs. Siffynet Solutions, (2004) 6 SCC 145
[20] Tata Sons v. Manu Kishori & Ors.,90 (2001) DLT 659 (Delhi)

that a domain name is like a trademark and hence income connected to trademark is taxable as royalty income.

The Assessee argued that it is only an intermediary and hence, it does not have any right in the property or trademark in the domain name. The consideration received as a fee is not received for use or right to use the domain name or even for transfer of all or any right of such domain name. There is a difference between transferring the right to use the trademarks and facilitating the process of registering the trademarks. The Appellant is not engaged in licensing of domain names; it simply assists customers/registrants in obtaining registration of domain names. Hence, the consideration received for such service cannot possibly be characterized as royalty.

Judgement of Hon'ble Delhi HC

The Hon'ble Delhi HC noticed that Assessee, based in US, is in the business of providing domain name registration services, web designing and web hosting services. Further, it does not have a permanent establishment or a fixed place of business in India. The Hon'ble Delhi HC observed that in case of Satyam Infoway Ltd, Hon'ble Supreme Court held that it is the Registrant (and not the Registrar) who owns the domain name and can protect its goodwill by initiating passing off action against a subsequent registrant of same or similar domain name. Consequently, the Hon'ble Delhi HC distinguished the judgment of in case of Satyam Infoway Ltd from the case of Assessee since the Court in Satyam Infotech was concerned only with the rights of the domain name owner and not the Registrar. It emphasized that the Assessee does not transfer any right to use the domain name to the customer and is only acting as one of the registrars. The fees received by the Assessee for registration of domain names of third parties, i.e., its customers, cannot be treated as royalty.

2. ***Hon'ble Mumbai ITAT[21]:*** *Observes 0.5% cannot be standard rate for charging corporate guarantee commission.*

Background

The Assessee company, engaged in the manufacturing of empty hard gelatin capsules of various sizes, had given corporate guarantee aggregating of Euro 6 million equivalent to INR 40,73,40,000 on behalf of its AEs namely ACG Lukaps d.o.o, Croatia for availing various credit facilities from Zagrabacka Banka, Croatia and City Bank, NA during AY 2012-13. The Assessee had not benchmarked the transaction on the ground that the same was not an international transaction as the corporate guarantee was given to a foreign bank. Without prejudice to the above, the Assessee considered the rates from Standard Chartered Bank as comparable rate which had offered a rate of 0.7% for similar guarantee.

The TPO relied on the decision of the co-ordinate bench in the case of Everest Kanto Cylinders Ltd.(in ITA No. 542/Mum/2012 vide order dated 23.11.2012) and Nimbus Communication Ltd. (in ITA No. 3664 & 2359/Mum/2010) and benchmarked the said international transaction by applying CUP method and rejected the CUP applied by Assessee @ 0.7%. The TPO stated that bank rates for such guarantee varies from 0.7% to 3% where the lowest rates of commission is charged on entities having higher credit rating and thereby determined the guarantee commission @ 1.75% and worked out ALP at INR 77,19,074. The CIT(A) held the said transaction to be an international transaction as per the amendment to Section 92B(2) of the Act. However, the CIT(A) held that the rate at 0.7% to be reasonable for the impugned transaction. Aggrieved by the said order the Assessee as well as Revenue had filed an appeal before the Hon'ble Mumbai ITAT.

Decision of the Hon'ble Mumbai ITAT

On appeal, the Hon'ble Mumbai ITAT observed that the corporate guarantee given by the Assessee on behalf of its AE for availing loan facility is for the purpose of

[21] ACG Associated Capsules Pvt Ltd [TS-701-ITAT-2023(Mum)-TP]

reducing the interest rate charged by the banks and while determining the ALP of the said transaction the same has to be considered from the perspective of the benefit received by the AE as per the interest saving approach. It was further observed that both the lower authorities have failed to look into this issue from this perspective before determining the ALP of the said transaction. The Hon'ble Mumbai ITAT held that 0.5% cannot be a standard rate for charging corporate guarantee commission and the same has to be determined in each case and for each year based on the credit rating of AE, comparable loan transactions where guarantees are issued and non-guaranteed loans by working out interest saving and then sharing it between transacting parties.

Thus, the Hon'ble Mumbai ITAT directed the Ld. AO/TPO to determine the ALP on corporate guarantee commission on the basis of the interest saving approach for the said transaction.

3. ***Hon'ble Mumbai ITAT[22]:*** *Holds counter corporate guarantee covered under Section 92B of the Act, rejects TPO's CUP for benchmarking export transaction.*

Background

The Assessee, an Indian Company is engaged in the business of manufacturing of paints and varnishes.

The Assessee and Kansai Paint Co Ltd (KPJ), a tax resident of Japan formed a joint venture, Kansai Coating Malaysia Sdn. Bdh (KCM) to take over the business assets and liabilities of Sime Darby Malaysia Bhd, a Malaysian Company. The Assessee subscribed to 55% and KPJ subscribed to 45% of the share capital of KCM.

The KPJ provided guarantee to RBH Bank based in Behard for loan taken by KCM, for working capital. The Assessee provided counter guarantee to the extent of 55% in proportion to its shareholding as required by its associate entity "KPJ". During the assessment proceedings, the Assessee contended before the Ld. TPO that giving counter guarantee is a shareholder activity and cannot be subjected to TP adjustment. The Ld. TPO did not agree with the submissions of the Assessee and benchmarked the ALP @ 6.36% (being the difference between BBB and AAA credit ratings as per CRISIL). The CIT(A) upheld the order of the Ld. TPO / AO.

Decision of Hon'ble Mumbai ITAT

On appeal, the Hon'ble Mumbai ITAT perused the judgment of Assessee own case on

[22] Kansai Nerolac Paints Limited vs. ACIT, [TS-705-ITAT-2023(Mum)]

the issue of ALP adjustment towards counter corporate guarantee and held that once corporate guarantees are issued, then the capacity of the issuer to raise further loans from banks, financial institutions etc. will get reduced as the corporate guarantee will certainly lead to higher debt to equity ratio which could also lead to higher rate of interest charged by the bankers in case borrower become over leveraged due to higher debts including guarantees issued.

Thus, the issue of corporate guarantee in favour of its AE is certainly an International transaction covered by the provisions of Section 92B of the Act. Further, explanation inserted in Section 92B of the Act by Finance Act 2012 clarifies the position that guarantees issued by Assessee in favour of its AE shall also be covered as International transaction.

Relying on the decision of the Hon'ble Bombay HC in case of CIT v. Glenmark Pharmaceuticals Limited[23] it was held that ALP of the corporate guarantee cannot be determined on the basis of charges as were prevailing for issuance of bank guarantee. It further held that no comparison can be made while determining ALP of commission on corporate guarantee with bank guarantee.

The Hon'ble Mumbai ITAT followed Assessee's own case for AY 2007-08, held that providing corporate guarantee to AE is an international transaction under Section 92B of the Act and ALP shall be calculated at 0.5%.

Notional interest for delayed payment from Aes

Further on the delay in receipt of export proceeds from the AE, the Hon'ble Mumbai ITAT held that delay in receipt of receivables from AE is an international transaction. Accordingly, the Hon'ble Mumbai ITAT directed the AO to charge interest at the rate of LIBOR +100 basis points after considering a credit period of 60 days.

4. ***Hon'ble Mumbai ITAT[24]:*** *Treats redeemable, Non-Convertible Cumulative Redeemable Preference Shares ('NCCRPS') as 'quasi capital', benchmarks basis LIBOR.*

Background

During the AY 2016-17, Thomas Cook (India) Limited ('the Assessee') procured financing from its Associated Enterprise ('AE') by issuing NCCRPS @ INR 10 per share with a dividend rate of 8.50% and redeemable after 7 years (actually redeemed after 3 years). The Ld. TPO observed that the issuance of NCCRPS is an international transaction as per 92B of the Act and the Assessee has not

[23] CIT v. Glenmark Pharmaceuticals Limited [101 taxmann.com 84]

[24] Thomas Cook (India) Limited: - TS-682-ITAT-2023(Mum)-TP

benchmarked the said transaction. On the other hand, the Assessee contended that no income arises from the issue of NCCRPS to its AE and therefore, the Assessee was not liable to comply with the requirements of Transfer Pricing provisions of the Act. The Assessee heavily relied on the decision of Hon'ble Bombay HC in the case of Vodafone India Services Private Limited[25]. However, the Ld. TPO treated the issue of NCCRPS as quasi equity, and accordingly, determined the ALP of the issue of shares at INR 205.45 and made upward adjustment for the difference of INR 195.45 per share. The total adjustment worked out to INR 2443,12,50,000. The Ld. TPO added the above differential amount as receivable in the hands of Assessee. As per opinion of the TPO, this receivable amount is required to be separately benchmarked for determination of ALP interest. While doing so, the Ld. TPO has considered the average borrowing rate of 9.945% shown by the Assessee in its audited financial statement. Accordingly, the Ld. TPO has determined the adjustment of INR 81,21,14,830 (i.e. interest @ 9.945% from 01.12.2015 to 31.03.2019 for 122 days).

The Hon'ble DRP sustained the observation of the Ld. TPO that the transaction under consideration is covered under Section 92B of the Act. Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT held that the NCCRPS issued by the Assessee was in nature of quasi capital and not quasi equity and the same will be treated as an international transaction for AYs 2016-17, 2017-18 and 2018-19. The Hon'ble Mumbai ITAT further held that the transaction will not fall under category of transaction involving generation of income or loss but will certainly fall within the category of capital financing. Accordingly, it rejected Assessee's reliance on jurisdictional HC's Vodafone India Services Private Limited citing factual differences. The Hon'ble Mumbai ITAT has also rejected TPO's valuation of NCCRPS based on

[25] Vodafone India Services Pvt Ltd. vs. UOI [50 taxmann.com 300].

valuation of equity shares citing (i) TPO cannot adopt the value of the preference shares on the basis of equity shares as they are inherently different instruments with different rights and entitlements (ii) benchmarking has to be done on the cost of employing the capital in the business like any other capital instruments, i.e., at the cost of borrowing in the international market (iii) non-convertible instruments cannot be treated at par with equity, though convertible instruments can be considered as equity to some extent.

The Hon'ble Mumbai ITAT held that since it is an international transaction the same cannot be benchmarked at the Indian market rate and as held in the various judicial pronouncements, the international transactions have to be benchmarked at the cost of capital based on the respective LIBOR rate. Therefore, the benchmark has to be done based on the LIBOR rate i.e., LIBOR + basis points + adjustment of risk factor, considering the fact that the AE has invested in India without any collateral securities.

The Hon'ble Mumbai ITAT directed the Assessing Officer to benchmark the NCCRPS by adopting the LIBOR rate (3 years quote) basis. Since the Assessee has incurred the cost of 8.5% in comparison to the LIBOR rate, the Hon'ble Mumbai ITAT directed to assessing officer / TPO to determine the ALP as the difference of dividend of 8.5% and the LIBOR rate.

5. ***Hon'ble Mumbai ITAT[26]:*** *The date on which the order is digitally signed by the competent authority is the date of the order. Thus, period of limitation will be examined with reference to the date of signing of the order.*

Background

In the instant case, the period of limitation for completion of assessment for AY 2016-17 under Section 153(1) of the Act was 31.12.2019 (after considering reference made to the TPO). The TP order was required to be passed under Section 92CA(3) of the Act on or before 31.10.2019 i.e. before 60 days prior to the said due date of 31.12.2019. While the TPO has issued the order dated 31.10.2019, the same was digitally signed on 01.11.2019. The Assessee has challenged the validity of the order under Section 92CA(3) of the Act by referring to the note at the bottom of the order which read as "If digitally signed, the date of digital signature may be taken as date of document." The said note itself made it unambiguous that the date of signature is the date of order. In this regard reliance was also placed on the provisions of Section

[26] Zydus Wellness Products Limited vs. DCIT [TS-683-ITAT-2023(Mum)]

282A of the Act read with Rule 127A of the Income Tax Rules 1962 and CBDT Instruction No. 1/2018 dated 12.02.2018 wherein it is stated that all departmental orders /communications / notices issued to the Assessee through 'e-Proceedings' are to be signed digitally by the Assessing Officer. Since the order passed under Section 92CA(3) of the Act has been digitally signed on 01.11.2019, the date of order is the date of signature and not the date mentioned in the title of the order i.e., 31.10.2019.

Decision of the Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT quashed the TPO's order and final assessment order as the same was barred by time limitation as per the provisions of Section 92CA(3A) r.w.s. 153 of the Act. In this regard, the Hon'ble Mumbai ITAT has placed reliance on the decision of Hon'ble Madras HC in case of Pfizer Healthcare India (P) Ltd[27] which was upheld by the Division Bench of the H.C. in the case of DCIT(TP) vs. Saint Gobain India Pvt. Ltd.[28] and the decision of co-ordinate bench in the case of Transporter Industry International Gmbh[29]. Further, the Hon'ble Mumbai ITAT has held that the order passed under Section 92CA(3) of the Act is time barred by 1 day. Thus, there is no valid order under Section 92CA(3) of the Act and hence, the extended period of limitation for passing the assessment order as per Section 153(4) of the Act would not be available and consequently, the final assessment order passed is also time barred.

[27] Pfizer Healthcare India (P) Ltd vs. JCIT [433 ITR 28]
[28] DCIT(TP) vs. Saint Gobain India Pvt. Ltd [444 ITR 636]
[29] Transporter Industry International Gmbh Vs. DCIT [ITA No.1240/Mum/2021]

II. Goods and Services Tax

1. Revision of time limit for issuance of order

Currently, for issuance of order the deadline for financial year 2018-19 and 2019-20 is March 31, 2024 and June 30, 2024 respectively. As per notification no.56/2023-Central Tax, the Government, on the recommendations of the Council, hereby, extends the time limit for issuance of order under section 73, relating to the period as specified below,

a. For the financial year 2018-19, up to the 30th day of April, 2024

b. For the financial year 2019-20, up to the 31st day of August, 2024.

2. Date extension for reporting opening balance for ITC reversal

In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement was introduced on the GST portal. This statement was made available to help the taxpayers in tracking their ITC that has been reversed in Table 4B(2) and thereafter re-claimed in Table 4D(1) and 4A(5). Now to facilitate taxpayers further, opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January, 2024.

3. Addition of new tables in FORM GSTR-1 starting from January 2024 onwards

a. **Table 14** – Supplies Made through E-Commerce Operators (In this table, you can add details of taxable outward supplies made through e-commerce operator.)

b. **Table 15** – Supplies under Section 9(5) of the CGST Act (In this table, you can add details of taxable outward supplies on which the e-commerce operator is liable to pay tax under Section 9(5) of the CGST Act.)

4. **Hon'ble Allahabad High Court Ruling in the case of M/S Rama Brick Field vs Additional Commissioner Grade-2 and others (WRIT TAX No. - 909 of 2022)**

   Brief facts of the case:

   a) At the time of transaction the seller was registered under the GST and subsequently during the survey the seller found to be non-existent.

   b) The tax authorities contested that they have clearly and categorically observed that the purchaser has failed to discharge the burden with regard to deposit of tax on the alleged purchases being made from the non-existent seller and demanded to dismiss the writ petition.

Hon'ble High court ruled that "under the GST regime all details are available in the portal of GST department. The authorities could have very well verified as to whether after filing of GSTR-1 and GSTR 3 B how much tax has been deposited by the selling dealer but the authorities have failed to do so. Thus looking to the said facts, the impugned orders cannot be sustained in the eyes of law."

III. CBDT Circulars & Notifications

1. CBDT[30] extends the relaxation limit for processing of return of income for AY 2018-19 to AY 2020-21

It is observed by CBDT that several returns filed for AY 2018-19, AY 2019-20 and AY 2020-21 in accordance with provision of Section 139, Section 142(1) or Section 119 of the Act were not processed under Section 143(1) of the Act, due to certain technical issues or for other reasons not attributable to assessees and consequently, no intimation were sent for such returns within the prescribed time-limit.

The Board has issued instructions / orders under Section 119 of the Act prescribing the relaxation in statutory time limit for processing the validly filed returns with refund claims and in non-scrutiny cases pertaining to AY 2017-18. The said instruction was furnished vide Order under Section 119 dated 16 October 2023, thereby extending the time frame for processing of returns till 31.01.2024. On similar lines, the Board has directed that in cases of e-filed returns with valid refund claims for AY 2018-19, AY 2019-20 and AY 2020-21 and the date of sending intimation under Section 143(1) has lapsed, can be processed now with prior approval of PCCIT / CCIT and intimation can be sent to concerned assessees by 31.01.2024.

It is pertinent to note that above-mentioned relaxation would not be applicable in following cases:

- Returns that are selected for scrutiny assessment,
- Returns which are not processed and where the return shows demand as payable or demand is likely to arise after processing the return.
- Returns remains unprocessed for any reason attributable to assessee.

[30] CBDT Order under Section 119 bearing Ref. No. F. No. 225/132/2023/ITA-II dated 01.12.2023

2. CBDT[31] prescribes Guidelines regarding provision of Section 194-O (4) of the Act

Section 194-O had been inserted by the Finance Act, 2020 making it mandatory for an e-commerce operator (ECO) to deduct and pay an income-tax @ 1% on gross amount of sale of goods or provision of services or both, facilitated through its digital or electronic facility or platform. Individuals or HUFs who fulfills certain prescribed conditions are exempted from provision of Section 194-O. The deduction of tax is required to be made at the time of payment or credit, whichever is earlier. Any payment made by buyer to seller (both ECO), in a transaction facilitated by another ECO, shall be deemed to be payment by ECO to Seller and shall be included in gross amount of sale of goods or provision of services or both for computing TDS.

In this regard, the CBDT has issued Guidelines earlier on Section 194-O vide Circular No. 17 of 2020 dated 29.09.2020 and Circular No. 20 of 2021 dated 25.11.2021. The CBDT has issued another Guidelines on 28.12.2023 clarifying the onus of the tax withholding. The details are tabulated as follows:

Sr. No.	Type of Transaction	Tax deducted on	Liability to deduct tax at the time of payment / credit, whichever is earlier	Liability for compliance w.r.t. e-TDS return & issuance of TDS certificate
01	Buyer and Seller are e-commerce participant and avails assistance of dedicated ECOs	Gross amount of transaction of sale of goods or provision of services	Seller-side ECO	Seller-side ECO
02	Buyer is an e-commerce participant and Seller is an ECO. The transactions are routed through multiple ECOs	Gross amount of transaction of sale of goods or provision of services	Seller-side ECO	Seller-side ECO
03	Buyer and Seller are e-commerce participant through multiple ECOs wherein ECOs levy convenience fees, commission, logistics or delivery fees or shipping fees or packing fees	Gross amount of transaction of sale of goods or provision of services (inclusive of convenience fees, commission, logistics or delivery fees or shipping fees or packing fees)	Seller-side ECO	Seller-side ECO

[31] Circular No. 20 of 2023 dated 28.12.2023

Sr. No.	Particulars
04	**Treatment of GST or state levies or state taxes:** **At time of credit:** Gross amount of transaction of sale of goods or provision of services (exclusive of GST or state levies or state taxes, where the amount is determinable) **At time of payment:** Gross amount of transaction of sale of goods or provision of services (since amount of state tax / levy is not determinable)
05	**Adjustment in purchase-return:** If the tax was deducted prior to purchase return, then amount of tax may be adjusted against next purchases against the same seller. However, if purchase-return is replaced, then there will be no adjustment required. The tax deducted and deposited will be allowed as credit to the seller.
06	**Discounts given by Seller or Byuer ECO / Seller ECO:** If the discount is given by the seller, then the price of goods / services would be reduced by the seller. The TDS would be applicable on post-discount amount. However, if the discount is given by the Buyer ECO / Seller ECO, then the tax will be deducted on the gross amount of transaction by the Seller ECO.

IV. Accounting, Audit & Assurance

1. Overview of the EAC opinion – Delayed Payment Charges on the basis of number of days of delay.

Presentation of DPC in the Statement of Profit and Loss

Facts of the Case: Company A (the Company) is engaged in the business of distribution of electric power to consumers. While charging tariff to its consumers, the company also collects DPC in case the consumers pay the tariff post the due date. The DPC is charged as per the tariff order of the State Electricity Regulatory Commission (SERC) Regulations. The management of the Company believes that DPC is in the nature of penalty and is charged to customers in the normal course of business. It accounts for DPC in the year of its realisation, as 'Income from other operating activity' under Revenue from Operations. Considering these facts, the EAC opined on the presentation and disclosure of the DPCs received by the Company, in the statement of profit and loss and the statement of cash flows of the Company.

The EAC clarified that the accounting treatment including presentation and disclosure of an item of income/expense depends on its nature and not the nomenclature used for the same. Based on this, EAC evaluated the requirements of Ind AS 115 with regard to determination of transaction price of a contract, and assessed whether DPC would be presented and disclosed as a variable consideration or as a significant financial component in the contract.

1. **Variable consideration:**

    - DPC is a charge to be paid by the customers towards delay in payment and is not towards exchange of promised goods and services to the customer.
    - DPC cannot be considered as a penalty, which is a variable consideration covered under paragraph 51AA of Ind AS 115.

2. **Significant financing component:**

   - DPC are charges to the customers who have not paid the bill within due date as per the tariff schedule.
   - DPC are defined in terms of percentage per annum, which indicates that the same is directly linked with the passage of time and the quantum of the same depends on the timing of payment by the customers.

EAC Opinion:

1. **DPC as a variable consideration**

   Ind AS 115 requires adjusting the transaction price for variable considerations, including penalties. However, in a case where Delayed Payment Charges (DPC) were imposed for customer defaults on payment, it was argued that DPC should not be treated as a penalty under variable consideration. Unlike penalties paid by entities, DPC is a charge for customer delay, not related to the exchange of goods or services. Therefore, the conclusion was that DPC does not qualify as variable consideration and should not be incorporated into the contract's transaction price.

2. **Significant financing component in a contract**

   a. **The crucial decision on financing component in revenue recognition**

      In the intricate realm of revenue recognition, the treatment of a financing component within a contract stands as a pivotal decision. A contract is deemed to have a significant financing component if the agreed-upon timing of payments provides a considerable benefit to either party in financing the transfer of goods or services to the customer. This significance is not contingent upon the explicit mention of a financing promise in the contract; it can exist implicitly through the agreed payment terms. As mandated by Ind AS 115, entities are required to adjust the consideration amount to reflect the impact of a significant financing component, ensuring the accuracy of the transaction price and aligning with principles of transparency.

   b. **Pragmatic approaches and contract - level evaluation**

      Ind AS 115 introduces a practical expedient to address practical challenges in recognizing revenue. If an entity avails this provision, it is not obliged to adjust the transaction price for the effects of a significant financing component, provided the period between transferring a promised good or service to the customer and receiving payment is expected to be one year or less. Additionally, the standard provides clarity that the assessment of the

significance of a financing component should be conducted at the contract level, urging a detailed examination of each contractual arrangement. This nuanced approach ensures a tailored evaluation of the financial dynamics within individual contracts, emphasizing accuracy and transparency in revenue recognition practices.

2. Accounting Implications of ESOP Exercise Price Revision: Expert Advisory Committee Opinion

Introduction

Employee Stock Option Plans (ESOPs) are a common practice in the corporate world, allowing employees to acquire company shares at a predetermined price. In this article, we delve into a specific case where a company in the manufacturing sector, operating as a conglomerate, revises the exercise price of its ESOPs. The Expert Advisory Committee provides insights on the accounting implications of this revision.

Facts of the Case

The company, a listed entity, granted 10,000 stock options in August 2007, with a vesting period of four years. However, due to attritions and non-fulfilment of eligibility conditions, the number of options was reduced to 9,000 in the second year. The company followed the intrinsic value method for ESOP accounting.

In the second year, facing a reduction in the market price of its shares, the company decides to revise the exercise price from ₹ 2,000 to ₹ 1,800 per share.

Key Queries Raised

The Expert Advisory Committee addresses three crucial queries posed by the company:

1. Whether an additional charge is required in the profit and loss account due to the exercise price revision.
2. Adjustability of the extra charge in the first year for subsequent periods.
3. Treatment of the amount credited to the ESOP Outstanding Account against the original grant at the time of option exercise.

Opinions and Recommendations

1. Incremental Cost Accounting:
    - The committee affirms that incremental cost, resulting from the exercise price revision, should be recognized for outstanding options based on the difference in exercise prices before and after the revision.

- The incremental cost should be expensed from the second year onwards, following the original plan's amortization principles outlined in the SEBI Guidelines.

2. Accounting for Extra Charge:
    - The extra charge in the second year is the net result of accounting for lapses and incremental cost. The committee emphasizes that no separate adjustment is needed, as the net impact is captured in the overall accounting treatment.
3. Treatment of ESOP Outstanding Account:
    - At the time of option exercise, the amount in the ESOP Outstanding Account, including the incremental amount from the exercise price reduction, should be debited, and the corresponding consideration should be credited to Share Capital and Share Premium accounts.

Conclusion

The Expert Advisory Committee provides a comprehensive opinion on the ESOP accounting issues raised by the company, ensuring clarity on the treatment of exercise price revisions, reduction in ESOPs, and the handling of the ESOP Outstanding Account at the time of option exercise. Companies facing similar situations can use this expert guidance to navigate the complexities of ESOP accounting.

Beyond the Numbers: Understanding Stakeholder impact from Increased Risk Weighted Asset

In a pivotal regulatory development, the Reserve Bank of India (RBI) has recalibrated the risk landscape in the financial sector through a circular issued on 16th November. With a keen eye on the burgeoning consumer credit market, the RBI has increased risk weights on unsecured consumer loans from 100% to 125%, credit cards from 125% to 150%, and loans from Scheduled Commercial Banks (SCBs) to NBFCs raised 25% over and above the current external rating (Only in cases where the same was below 100%).

The notification does not apply to Housing Loan, Education Loan, Vehicle loan, loans secured by gold, HFCs and loans to NBFCs classified under priority sector.

This adjustment is set to impact the following stakeholders:

- **Banks:** A cautious lending approach due to rise in cost of capital and perceived risk of unsecured consumer credit
- **NBFCs:** Rise in their cost of capital on source of their funds from SCBs and deployment in unsecured loans as well.
- **Fintech Companies:** Banks and NBFCs have become hesitant to dole out unsecured loans, which are one of fintech companies' major offerings.
- **Final Consumers:** Increase in overall interest cost as well as difficulties in borrowing due to additional checks to be kept in place as per RBI Guidelines.

Rationale Behind the Regulatory Move:

The consumer loans for Banks and NBFCs witnessing a notable 23% growth in the last two years post-Covid-19 surpassing the 12-14% average in overall credit, stands as a primary catalyst for the RBI's regulatory adjustment. This substantial

growth, was further fueled by exponential growth of Fintech companies venturing into riskier consumer credit segments. They were incentivized by Banks and NBFCs aiming to expand their loan portfolios with higher-margin categories.

Additionally, the increasing flow of funds from Banks to NBFCs, reaching 22% in FY'23, particularly directed towards consumer loans, has raised concerns about the growing interconnectedness between Banks and NBFCs. The recent regulatory move by the RBI is a clear response to these evolving dynamics, emphasizing the need for a cautious approach in the lending landscape.

The impacts on various stakeholders have been further elaborated below:

Scheduled Commercial Banks: A Rethink in Lending Practices

The banking system capital is currently estimated at INR 15.2 lakh crore. The change in weights on unsecured loans is estimated to increase the CRAR requirements of banks by 55-60 bps. Further, banks will face an additional capital requirement of ~5% or **~INR 84,000 Crores.**

This in turn shall increase the interest rates and reduce the capital allocation for unsecured loans. Thereby, impacting the disbursements of retail unsecured loans.

Further, the new norms shall make banks more diligent and cautious before releasing wholesale loans to NBFCs as well as loans without collateral or otherwise.

NBFCs: A Double Whammy

Consumer Credit focused Non-Banking Financial Companies, are going to be grappling with these changes having a two-sided impact for them, increased cost on their borrowings from SCBs, and secondly reduced capital available for disbursements.

At present the borrowings from banks form 35-60% of borrowing mix for various NBFCs. These loans are expected to witness a higher rate of interest, owing to higher risk weight for the banks. This is expected to have a 10-20 basis points impact on cost of funds for NBFCs.

Fintech Companies: Feeling the Heat of Regulatory Scrutiny

The RBI's heightened focus on consumer credit without collateral will lead the Banks and NBFCs to be more cautious in providing such products. Fintech loan distribution companies, are going to face implications of the same. Companies which have a larger proportion of such unsecured and riskier loans in their basket will be forced to gradually phase them out and focus on other categories.

Paytm, a fintech loan distributor recalibrated its forecasts and revenue guidance by deciding to scale back on the small ticket Buy Now Pay Later loans (Unsecured

personal loans) with ticket size less than INR 50k. This led to share prices of company falling by over 30% since the announcement. Zestmoney struggling with several issues due to RBI regulations on BNPL sector over the last year, is expected to shut down as per the media reports after the current changes in RBI norms.

End consumer: Caught in the crosshairs

The end consumers are going to be the ones eventually facing consequences of the above measures. Rate of interest and overall finance cost for people opting for unsecured loans will see a significant jump, creating difficulties in refinancing their earlier loans as well as taking out newer ones. Lending rates are expected to go up atleast by 40-75 bps.

Further, the tightening of credit for unsecured consumer loans will result in higher level of checks and diligence being conducted on the part of Banks and NBFCs, making the process more tedious and difficult for the consumers.

Sizing Up the Landscape: A Macroscopic View

Beyond the specific implications for individual banks, NBFCs, and fintech firms, the adjustments signal a broader economic consideration. The central bank's proactive stance reflects concerns about potential risks associated with unchecked growth in specific lending segments. The RBI's measures signal a proactive approach to manage risks associated with the consumer credit segment, aiming to safeguard the stability of the financial system.

The interconnection between banks and NBFCs, coupled with the possible ripple effects on smaller entities, underscores the need for vigilance and checks to ensure sustained financial stability.

While these changes may pose challenges in the short term, they are essential for fostering a more resilient and sustainable lending environment in the long run. Stakeholders need to adapt their strategies, risk management practices, and lending standards to comply with these regulations and maintain a healthy financial ecosystem.

VI. Compliance Calendar Jan. 24

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Jan	December 2023	TDS / TCS Payment	Non-Government Deductors
02	15th Jan	Quarter 3 (Oct – Dec 2023)	Form 15G/15H	Non deduction of TDS
03	15th Jan	Quarter 3 (Oct – Dec 2023)	TCS Return	All Assessee
04	31th Jan	Quarter 3 (Oct – Dec 2023)	TDS Return	All Assessee

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Jan.	December 23	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Jan.	December 23	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Jan.	December 23	GSTR 1	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 Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Jan.	Qtr. 3 F.Y. 2023-24 (Oct to Dec)	GSTR – 1 - QRMP	All those tax payers opted for Quarterly Return Monthly Payment Scheme
05	13th Jan.	December 23	GSTR – 6 (ISD)	Person registered as ISD
06	20th Jan.	December 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

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
07	20th Jan.	December 23	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Jan.	December 23	GSTR - 5A (OIDAR)	OIDAR services provider
09	22nd Jan.	Qtr. 3 F.Y. 2023-24 (Oct to Dec)	GSTR – 3B - QRMP (for April - June 23) (I) *	Aggregate Turnover is up to Rs. 5 crores
10	24th Jan.	Qtr. 3 F.Y. 2023-24 (Oct to Dec)	GSTR – 3B - QRMP (for April - June 23) (ii)**	Aggregate Turnover is up to Rs. 5 crores
11	25th Jan.	Qtr. 3 F.Y. 2023-24 (Oct to Dec)	GST – ITC 04	Quarterly return for good sent for Jobwork

* i - 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

*ii - Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -2 states

C. FEMA Compliance

Sr. No.	Due Dates	Particulars	Applicable to
01	7th Jan	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders

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, Jeweller y 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.

Our Locations

MUMBAI (H.O.)

302-304, Regent Chambers,
Nariman Point, Mumbai - 400 021.

Tel.: +91 022 4343 9191

BRANCH OFFICES:

3rd Floor, Solitaire Corporate Park - Bldg IV,
Chakala, Andheri, Mumbai - 400 056.
Tel.: +91 022 4141 9191

1501/1502, Oriana Business Park,
Wagle Estate, Thane (W),
Mumbai - 4000 601.

Tel.: +91 022 4604 1995

PUNE

1244-B, Shreeram Apt., Lane Adjacent to L.D. Bhave, Gas Agency, Apte Road,
Deccan Gymkhana, Pune - 411004.
Tel.: +91 20 2553 0144

DELHI

E-6, First Floor, Connought Place,
New Delhi - 110001.

Tel: +91 011 4365 6583 | 84

AHMEDABAD

813, Shree Balaji Heights, Besides IDBI Bank,
C.G. Road, Ahmedabad - 380006.

Tel: +91 079 4003 9647

L: +91 22 4343 9191

F: +91 22 2283 27 27

E: mail@bhutashah.com

W: www.bhutashah.com

Disclaimer:
This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Bhuta Shah & Co LLP, its members, employees and agents disclaim any and all liability for any loss or damage caused to any person from acting or refraining from acting as a result of any material in this publication. Without prior permission of BSC, this publication may not be quoted in whole or in part or otherwise referred to in any documents.