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BSC BEACON

Tax & Regulatory Insights

MARCH 2024

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
ALP	Arm's Length Price
AO	Assessing officer
AE	Associate Enterprise
AY	Assessment Year
BMA	Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015
CUP	Comparable Uncontrolled Price
CIT	Commissioner of Income-tax
CIRP	Corporate Insolvency Resolution Process
CSR	Corporate Social Responsibility
CPC	Centralized Processing Center
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(IT)	Commissioner of Income-tax (International Taxation)
CBDT	Central Board of Direct Taxes
DRP	Dispute Resolution Panel
DCIT	Deputy Commissioner of Income Tax
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowing
EEFC	Exchange Earners Foreign Currency
FTS	Fees for Technical Services
HC	High Court
Hon'ble	Honourable
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
IFSC	International Financial Service Center
Ld.	Learned
NFAC	National Faceless Assessment Centre

ABBREVIATION	FULL FORM
NCD	Non-Convertible Debentures
NRI	Non-Resident Individual
NRE	Non-Resident (External)
OM	Office Memorandum
PAN	Permanent Account Number
PE	Permanent Establishment
PY	Previous Year
PCIT	Principal Commissioner of Income Tax
PCCIT	Principal Chief Commissioner of Income Tax
Rules	Income-tax Rules,1961
SLP	Special Leave Petition
SEZ	Special Economic Zone
SC	Supreme Court
SEBI	Securities Exchange Board of India
TDS	Tax Deducted at Source
TPSR	Transfer Pricing Study Report
TPO	Transfer Pricing Officer
TRC	Tax Residency Certificate
USA	United States of America

I. Direct & International Taxation

A. Corporate Tax

1. *The Hon'ble Madras High Court[1]: Quashes reassessment proceedings owing to issuance of notice under Section 148 of the Act on gross erroneous factual foundation and non-adherence of mandate prescribed under Section 151 of the Act.*

Background

FIVES India Engineering & Projects Private Limited ('the Assessee'), had entered into an Assistance Service Agreement (ASA) with its AE – Fives France and Fives Solios SA. The Assessee made an application before the Authority for Advance Ruling (AAR) under Section 245Q(1) of the Act in respect of the ASA between the Assessee and Fives France seeking a ruling on whether the payments made to its AE under the said agreement is liable to withholding tax under Section 195 of the Act.

However, the Assessee had deducted the tax on payments made to Fives France in respect of all transactions covered under the scope of the ASA, even though the AAR application was pending for disposal. The AAR rejected the application of the Assessee vide order dated 01.02.2021. In the meantime, the Assessee filed its Return of Income for the impugned AYs - AY 2014-15 to AY 2017-18, which were accepted by the tax authorities.

Subsequently, the Assessee received a notice for reassessment for above-mentioned AYs which were assailed successfully before the Hon'ble Madras High Court on the basis of changed legal regime. However, on the basis of judgment of the

[1] FIVES India Engineering & Projects Private Limited [TS-163-HC-2024(MAD)]

Hon'ble Supreme Court in the case of Ashish Agarwal[2], the Income Tax Authorities revived the reassessment proceedings to treat the notice issued under Section 148 as notice issued under Section 148A(b) of the Act. Further, the tax authorities issued a communication in May 2022 wherein the Form 3CD and certain payments made by the Assessee to its AEs (i.e., transactions of Rs. 56.09 Lakhs with Fives Solios SA and of Rs. 43.53 Lakhs with Fives France) and were referred to as the reason for initiating reassessment proceedings. The said communication also mentioned a reference to AAR application made by the Assessee.

The Assessee submitted its response to the reassessment notice in June 2022 stating that issuance of notices were on gross factual errors as the AAR application was made only in respect of ASA between the Assessee and Fives France, which was in operation till 31.12.2014.

Further, the Assessee submitted in July 2022 that it had withheld and deposited taxes in respect of payments made to Fives France for the above-mentioned AYs with respect to transactions forming subject matter of AAR application. It also submitted the details of payment and proof of tax payments. However, the Income Tax Authorities proceeded further and passed order under Section 148A(d) of the Act considering a fit case for reassessment. Consequently, a notice under Section 148 of the Act was issued in respect of each of impugned AYs. The Assessee requested for copies of sanction letters in respect of reassessment. On perusal of the sanction letters, the Assessee filed writ petitions before the Hon'ble Madras High Court challenging the validity of order issued under Section 148A(d), notice issued under Section 148 of the Act and subsequent notices making the assessment.

The Assessee challenged the impugned notice and orders on the basis of limitation as well for AY 2016-17 and AY 2017-18. On perusal of the sanction letters, it was observed that draft order under Section 148A(d) of the Act was passed pursuant to approval sought from CCIT (OST), Chennai. However, as per provision of Section 151 of the Act, the CCIT is not the specified authority for sanction of reassessment. Since 3 years have been elapsed regarding the period from AY 2016-17 and AY 2017-18, the sanction and approval of PCCIT or PDGIT was required for initiating the reassessment proceeding. In this regard, the Assessee relied on the judgments in case of Rajiv Agarwal[3], Chhugamal Rajpal[4], S. Goyanka Lime & Chemicals Ltd.[5] wherein it was held that where the reassessment proceedings were initiated without application of mind and approval for issue of notice under Section 148 of the Act was granted in a mechanical fashion, the same needs to be interfered.

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[2] Union of India v. Ashish Agarwal, (2023) 1 SCC 617 (SC)

[3] Rajiv Agarwal v. ACIT & Ors, (2017) 395 ITR 255 (Delhi)

[4] Chhugamal Rajpal v. S.P.Chalina & Ors., (1971) 1 SCC 453,

[5] CIT v. S. Goyanka Lime & Chemicals Ltd., (2014) SCC OnLine MP 4550

However, the Income tax authorities contended that Assessee should have filed statutory appeals as alternate appeal mechanism is available. Also, it alleged that Assessee failed to deduct withholding tax on payments made to AEs based on the assumption that AAR would issue a favorable ruling.

Judgement of Hon'ble Madras High Court

The Hon'ble Madras High Court has observed that communication of May 2022 stating the reasons for reopening the assessments and noted the reply filed in June 2022 by the Assessee pointing out the erroneous basis for initiating the reassessment proceedings, in response to said communication. The Hon'ble Madras High Court also observed that despite bringing the factual errors to the notice of tax authorities, the Ld. AO proceeded to issue the impugned order under Section 148A(d) of the Act.

The Hon'ble Madras High Court held that satisfaction of the Ld. AO that there are reasons to believe that income has escaped assessment, is required to be reached upon objective satisfaction on the basis of tangible materials. If the reassessment proceedings are initiated mechanically or on wrong factual foundation, such orders may warrant interference.

Further, the Hon'ble Madras High Court noticed that Assessee has placed the communication dated 16.07.2022 to the Ld. AO wherein the details of taxes withheld and deposited in respect of payments made to Fives France during the period from AY 2014-15 to AY 2017-18.

Therefore, the Hon'ble Madras High Court held that order issued under Section 148A(d) of the Act and notice under Section 148 of the Act were vitiated on account of both the reasons viz. reopening was based on grossly erroneous factual foundation and the fact that Assessee actually withheld and remitted taxes in respect of transactions with Fives France. Further, with regard to AY 2016-17 and AY 2017-18, the notice under Section 148 of the Act were issued with the approval of CCIT, who is not a specified authority as per Section 151 (ii) of the Act. Therefore, the Hon'ble Madras High Court noted that the reassessment proceedings for the AY 2016-17 and AY 2017-18 were vitiated on this ground also.

The Hon'ble Madras High Court allowed the Writ Petitions of the Assessee by quashing the impugned order under Section 148A(d) as well as the notice under Section 148 of the Act and hence, the assessment orders issued thereafter will not survive.

2. *The Hon'ble Bombay High Court[6]: Notice under Section 148 of the Act is not covered by fifth proviso to Section 149 if it is barred by first proviso.*

Background

Godrej Industries Limited ('the Assessee') has received a notice issued under Section 148 of the Act on 21.05.2021 under the old regime for the AY 2014-15. The Assessee did not challenge the said notice by way of writ petition. Subsequently, pursuant to judgment of Hon'ble Supreme Court in case of Ashish Agarwal[7], a notice under Section 148A(b) of the Act was issued on 24.05.2022 requiring the Assessee to furnish reply by 08.06.2022. The Assessee filed a detailed response on 08.06.2022. A letter dated 28.06.2022 was issued to the Assessee asking to provide certain details by 08.07.2022. The Assessee made submission on 02.07.2022.

Thereafter, the Assessee received an order issued under Section 148A(d) of the Act and notice under Section 148 of the Act, both dated 31.07.2022. The Assessee filed a writ petition before the Hon'ble High Court challenging the notice issued under Section 148A(b) dated 24.05.2022, notice issued under Section 148 dated 31.07.2022 and the order issued under Section 148A(d) of the Act.

The Assessee contended that impugned notices and order are without jurisdiction as the same was issued without compliance with provision of Section 147,148,148A,149 and 151 of the Act. The Assessee was also of the view that directions given in judgment of Ashish Agarwal (supra) is not applicable since no writ petition was filed by the Assessee. The extended period of limitation as per Section 149(1)(b) of the Act was also not applicable in absence of any income chargeable to tax which is represented in the form of asset that has escaped assessment. Further, the approval obtained under Section 151 of the Act was without application of mind.

The Assessee further contended that first proviso to Section 149(1) of the Act

[6] Godrej Industries Ltd [TS-137-HC-2024(BOM)]

[7] Union of India v. Ashish Agarwal, (2023) 1 SCC 617 (SC)

restricts the applicability of extended period of 10 years (Section 149(1)(b)) for issuance of notice under Section 148 of the Act by providing that no notice under Section 148 can be issued for an AY, if the same could not have been issued at that time on account of being beyond the time limit under the pre-amended Section 149(1)(b) of the Act. Even under the amended provisions, the notice under Section 148 of the Act could have been issued by 31.03.2021 (as per Section 149(1) of the Act).

Per contra, the tax authorities contended that the time to issue notice under Section 148 of the Act was extended under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ['TOLA'] by Notification No. 20 of 2021 dated 31.03.2021 and further by Notification No. 38 of 2021 dated 27.04.2021 upto 30.06.2021. Since the original notice under Section 148 of the Act was issued on 21.05.2021, the same was within the time as per Section 148 of the Act. The sanction was granted by authority as prescribed under Section 151 of the Act. It was also contended that the period ranging from 21.05.2021 to 04.05.2022 has to be considered for exclusion in accordance with the directions given by Hon'ble Supreme Court in case of Ashish Agarwal (supra) and fifth proviso to Section 149(1) of the Act read with CBDT Instruction 1/2022.

Judgement of Hon'ble Bombay High Court

The Hon'ble Bombay High Court referred to the judgment in the case of The New India Assurance Co Ltd[8]. The Hon'ble Bombay High Court noted that fifth proviso was enacted to provide for exclusion of certain time in computing the period of limitation under Section 149 of the Act. The time to be excluded includes (i) time allowed to an assessee as per show cause notice under Section 148A(b) of the Act and (ii) the period during which proceedings under Section 148A of the Act is stayed by an order or injunction of any Court. Accordingly, the period from 24.05.2022 to 08.06.2022 (16 days) and from 28.06.2022 to 08.07.2022 (11 days) would qualify for exclusion from computing the period of limitation.

However, as the notice under Section 148 of the Act was issued on 31.07.2022, the same was barred by limitation as per the first proviso to Section 149(1) of the Act. The Hon'ble Bombay High Court noted that Hon'ble Supreme Court in Ashish Agarwal (supra) only deemed the first notice issued under Section 148 of the Act to be a show cause notice under Section 148A(b) of the Act and left all the defences available to assessee under Section 149 of the Act. It did not grant any stay and therefore, the period from 21.05.2021 till date of issue of notice under Section 148A(b) of the Act cannot be excluded under either the first limb or second limb of

[8] The New India Assurance Co Ltd. vs. ACIT, Mumbai (2024) SCC Online Bom 146

fifth proviso to Section 149(1) of the Act.

The Hon'ble Bombay High Court held that validity of a notice must be judged on the basis of existing law on the date on which notice is issued under Section 148 of the Act (i.e., 31.07.2022). Accordingly, as per the first proviso to Section 149(1) of the Act, no notice under Section 148 of the Act can be issued after 01.04.2021. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where the one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached. Hence, the exclusion of the period from 21.05.2021 to 04.05.2022 (date of order of Ashish Agarwal) under the fifth proviso to Section 149(1) of the Act, as contended by tax authorities, cannot apply as the impugned notice would travel back in time to original date. Accordingly, the impugned notice dated 31.07.2022 is held to be bad in law.

3. ***The Hon'ble Delhi High Court[9]:*** *Held that matter already apprehended by ITSC for a particular AY, can only be reopened as per the procedure mentioned in Section 245 of the Act and not under Section 148 of the Act.*

Background

The return of income of Orchid Infrastructure Developers Pvt. Ltd. ('the Assessee') for AY 2007-08 was accepted vide assessment order under Section 143(3) of the Act dated 30.12.2008. However, pursuant to a search on the premises of Shri Hari Ram Group, the assessment order was passed under Section 153A of the Act in the case of Assessee wherein following additions were made:

- Disallowance on account of interest expenses; and
- Addition on account of difference in valuation of closing work in progress of a project

[9] Orchid Infrastructure Developers Pvt Ltd [TS-203-HC-2024(DEL)]

On appeal against the impugned assessment order, the Hon'ble CIT(A) allowed the Assessee's claim of interest expenses but, affirmed the addition of difference in valuation of closing work in progress. Thereafter, the Assessee filed a settlement application for AY 2007-08 to AY 2014-15. In the meantime, the Assessee as well as the tax authorities preferred an appeal before Hon'ble ITAT wherein Hon'ble ITAT dismissed the appeal filed by the tax authorities. On further appeal before the Hon'ble Delhi High Court by the tax authorities, the Hon'ble Delhi High Court dismissed the appeal. Further, the tax authorities challenged the order of Hon'ble Delhi High Court before Hon'ble Supreme Court by way of Special Leave Petition which was tagged along with the case of CIT v. Abhisar Buildwell P. Ltd.[10]

In the meantime, the ITSC passed a final order on the settlement application filed by the Assessee for the captioned AY.

However, in light of judgement of Hon'ble Supreme Court in case of Abhisar Buildwell P. Ltd. (supra) and CBDT Instruction, the tax authorities initiated reassessment proceedings and order under Section 148A(d) of the Act was passed. Aggrieved by the reassessment order, the Assessee filed a writ petition before the Hon'ble Delhi High Court to quash the said reassessment order on the ground that issues, on which reopening is done, is already settled by the order of ITSC and once the ITSC is seized of the assessment of a particular AY, it can only be reopened as per the procedure mentioned in Section 245 of the Act and not in the form of separate proceedings under Section 148 of the Act.

Judgement of the Hon'ble Delhi High Court

The Hon'ble Delhi High Court relied on the judgement of Hon'ble Supreme Court in the case of Brij Lal v. CIT[11], wherein the scope of the order passed under Section 254D(4) of the Act was discussed while striking a distinction between the assessment in law and the assessment by way of settlement. The Apex Court drew an equivalence between the computation of total income as per the self-contained code contemplated under Chapter XIX-A of the Act for the purpose of settlement and assessment, as they both tend to operate exclusively but for fulfilment of the same objective.

Further, relying on the judgements of Hon'ble Gujarat High Court in the case of Komalkant Faikirchand Sharma[12] as well as of coordinate bench in case of Omaxe Ltd[13], the Hon'ble Delhi High Court held that if two different orders determining the total income of an assessee would be permitted to stand concurrently for a particular

[10] CIT v. Abhisar Buildwell P. Ltd. [2023 SCC Online SC 481]
[11] Brij Lal v. CIT [(2011) 1 SCC 1]
[12] [2019 SCC OnLine Guj 6963]
[13] [2012 SCC OnLine Del 3611]

AY, the same would give rise to administrative uncertainty which is completely impermissible as per the provisions of the Act. In case, the tax authorities are not satisfied with the computation of income by the ITSC for the relevant AY, the same could only be assailed in accordance with the provisions contemplated under Section 245D(6) read with Section 245D(7) of the Act.

Also, the Hon'ble Delhi High Court held that the judgement in the case of Abhisar Buildwell P. Ltd. (supra) cannot be construed to be an authority to override the mandate of Section 245-I of the Act. Since the decision of the ITSC qua the issues in the present petition has already attained finality, therefore, taking a cue from the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Brij Lal (supra), the reliance placed by the tax authorities on Abhisar Buildwell P. Ltd. (supra) to proceed with the reassessment proceedings, is held to be completely unjustifiable and unsustainable.

4. ***The Hon'ble Delhi High Court[14]:*** *Held that the Office Memorandums (OMs) does not prescribe mandatory condition to pay 20% of demand. The tax authorities have discretion to grant the stay with payment of lesser amount then prescribed limit.*

Background

National Association of Software and Services Companies ('the Assessee') filed its return of income for AY 2018-19 claiming a refund of Rs. 6.46 Crores. However, the Ld. AO has passed the assessment order by making various additions and determining the tax demand of Rs. 10.27 Crores. Aggrieved by the assessment order under Section 143(3) of the Act, the Assessee preferred an appeal, and simultaneously filed a stay application against the impugned demand.

The Ld. AO did not dispose the stay application on the ground that the Assessee has not paid 20% of the said demand. The Assessee also filed an appeal before the Hon'ble CIT(A) through NFAC. During the pendency of the said appeal, the Assessee

[14] National Association Of Software And Services Companies [TS-195-HC-2024(DEL)]

filed a rectification application under Section 154 of the Act on account of mistakes apparent on record. However, the tax authorities proceeded to adjust the full impugned demand against the refunds due to the Assessee for AY 2010-11, AY 2011-12 and AY 2020-21 which aggregated to Rs. 11.72 Crores despite the pendency of appeal and without disposing off the stay application.

Aggrieved by the action in respect of adjustment of refund against impugned demand, the Assessee filed a writ petition before the Hon'ble Delhi High Court.

Judgment of the Hon'ble Delhi High Court

Hon'ble Delhi High Court referred to CBDT OM - F.NO.404/72/93-ITCC dated 29.02.2016 modified by F.NO.404/72/93-ITCC dated 31.07.2017 and held that the said OM neither prescribe nor mandate payment of 20% of the demand as a pre-condition for grant of stay. The said OM specifically refers to the discretion vesting in the Ld. AO to grant stay subject to a deposit at a rate higher or lower than 20% depending upon the facts of a particular case.

Hon'ble Delhi High Court also referred to the decision of Hon'ble Supreme Court in case of Principal Commissioner of Income Tax & Ors. vs LG Electronics India Pvt. Ltd.[15], wherein it was emphasized that the administrative circular would not restrict the power otherwise conferred on a quasi-judicial authority and that it would be wholly incorrect to view the OM as mandating the deposit of 20%, irrespective of the facts of an individual case. This would also flow from the clear and express language employed in Section 220(6) of the Act which speaks of the AO being empowered "in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case". The discretion thus vested in the hands of the AO is one which cannot possibly be viewed as being cabined by the terms of the OM.

Based on above, the Hon'ble Delhi High Court held that the Ld. AO has erred in proceeding on the assumption that the application for consideration of outstanding demands being placed in abeyance could not have even been entertained without a 20% pre-deposit. The Ld. AO have clearly acted arbitrarily in proceeding to adjust the demand for AY 2018-19 against available refunds without attending to the stay application. This action of the Ld. AO is wholly arbitrary and unfair. Accordingly, the Hon'ble Delhi High Court allowed the writ petition and remitted the matter to the tax authorities to consider the stay application of the Assessee based on the observations made by the Hon'ble High Court. Pursuant to action on the stay application, the tax authorities may determine the quantum of the refund to be released.

[15] (2018) 18 SCC 447

5. *The Hon'ble Bombay High Court[16]: Share premium non-taxable 'capital receipt'; Alleged violation of Companies Act conditions irrelevant.*

Background

Shendra Advisory Services P. Ltd ('the Assessee') is a Joint Venture between Indian Promoters, viz., Pantaloons Retail India Limited, Pantaloon Industries Limited (Future group) and a Netherlands based company, Participatie Maatschappij Graafsshap Holland NV (PMG). As a part of the JV arrangements and agreed business strategy, the Future group was to be issued shares at a face value of Rs. 10 each, whereas PMG was to infuse funds at a share premium of Rs. 2,490 per share. Accordingly, shares were issued by the Assessee at Rs. 10 each to Future Group and to PMG at Rs. 2,500 per share. The Assessee had issued shares during the period from AY 2008-09 till AY 2012-13. On completion of the scrutiny assessment proceeding for the AY 2009-10, the tax authorities held the entire share premium receipt of Rs. 47.88 crores as unexplained cash credits under Section 68 of the Act. The Ld. AO made additions in the hands of the Assessee on the ground that there was no justification for charging share premium and that there was violation of the provisions of Section 78(2) of the Companies Act, 1956. Aggrieved by the assessment order, the Assessee filed an appeal before the Hon'ble CIT(A), who upheld the assessment order. Consequently, the Assessee filed an appeal before the Hon'ble ITAT, which dismissed with a direction to the tax authorities to examine the aspects whether there was any violation of the provision of Section 78(2) of the Companies Act,1956. Therefore, being aggrieved by the decision of the Hon'ble Mumbai ITAT, the Assessee filed an appeal before the Hon'ble Bombay High Court.

Judgment of Hon'ble Bombay High Court

The Hon'ble Bombay High Court observed that during scrutiny assessments of AY 2009-10 and AY 2010-11), tax authorities raised the issue of share capital and issued notices to the Assessee. However, they accepted the Assessee's explanation

[16] Shendra Advisory Services P. Ltd [TS-111-HC-2024(BOM)]

and concluded the assessment without making any additions by considering the share capital as proper and genuine. The Hon'ble Bombay High Court placed reliance on various judgements of the co-ordinate bench in case of SLS Energy[17], Godrej Projects Development[18] and Vodafone India Services[19] wherein it was held that the amount received on issue of shares is a capital account transaction not separately bought within the definition of income. Thus, the Hon'ble Bombay High Court held that, *"share premium received by issuance of shares is on capital account and gives rise to no income"*

Further, the Hon'ble Bombay High Court referred to the judgement of Hon'ble Mumbai ITAT in case of Credit Suisse Business Analysis (India) P Ltd[20], wherein it was held that even the inclusive definition of income does not stipulate that non-compliance of any provision of other Act would result in turning of capital receipts into revenue receipt. Accordingly, the Hon'ble Bombay High Court emphasized that *"It is not a fair or judicious approach to deal with the subjects of the State. Even if the assessee had violated the provisions of Companies Act, 1956, it will be penalised by the provisions of that Act and it would never turn a capital receipt into revenue receipt or vice versa".* The Hon'ble Bombay High Court also observed that there is nothing on the record from the balance sheet filed that the share premium amount has been utilized for purposes other than what is prescribed in Section 78(2) of the Companies Act, 1956 and just because the amount has been invested, does not mean that the amount has been utilized for purposes other than what is prescribed in Section 78(2) of the Companies Act, 1956.

Further, the Hon'ble Bombay High Court referred to the judgement of Hon'ble Mumbai ITAT in the case of DCIT v. Finproject India (P.) Ltd[21], wherein it was held that the tax authorities erred in not distinguishing what is meant by utilization of the funds being proceeds of share premium raised for the specified approved purposes and the creation of share premium account in the books of accounts for share premium received. It was opined that the Hon'ble Mumbai ITAT's reliance on Hon'ble Supreme Court judgement in case of Bharat Fire & General Insurance[22] has been misplaced as it was a case where company had declared dividend out of the capital reserve and the Court was considering how that amount has to be dealt with after coming into the force of the Companies Act, 1956. Consequently, the order of ITAT was quashed and appeal of the Assessee was allowed by the Hon'ble Bombay High Court.

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[17] SLS Energy (P) Ltd. V/s. Income Tax Officer (2023) 154 taxmann.com 400 (Bombay)
[18] Godrej Projects Development Pvt. Ltd. V/s. Income Tax Officer, 1(1)(4) &Ors 2024 SCC Online Bom 366
[19] VODAFONE INDIA SERVICES PVT. LTD. [2014] 50 TAXMANN.COM 300 (BOMBAY)
[20] Credit Suisse Business Analysis (India) (P.) Ltd. V/s. ACIT (2016) 72 taxmann.com 131 (Mumbai-Trib.)
[21] DCIT v. Finproject India (P) Ltd (2018) 93 taxmann.com 461 (Mumbai-Trib.)
[22] Bharat Fire & General Insurance Ltd v. CIT (1964) 53 ITR 108 (SC)

6. *Hon'ble Delhi High Court[23]: Directs re-adjudication of application under Section 197 of the Act as FTS requires 'Specialised & Customised technological knowledge transfer.*

Background

SFDC Ireland Limited ('Assessee Company') is engaged in the business of operating customer relationship management (CRM) offerings, applications, and platforms, including sales, service, marketing, commerce, integration, analytics and related products and services collectively referred to as "SFDC products".

Assessee Company contended before the Ld. AO that it is a tax resident of Republic of Ireland holding a valid Tax Residency Certificate (TRC). Further, it does not have a Permanent Establishment (PE) as per Article 5 of the DTAA. It entered into Reseller Agreement with Salesforce.com India Private Limited (SFDC India), as a consequence of which SFDC India was appointed as the non-executive reseller of SFDC products for onward resale to end customers in India. SFDC India was entrusted to market, distribute and sell SFDC products in India.

Assessee Company filed an application under Section 197 of the Act seeking Nil or Lower TDS certificate in respect of receivable from SFDC India as per Reseller Agreement. The tax authorities denied Nil or Lower TDS Certificate on the basis that the Assessee Company was not selling standard off-the-shelf / non-customized downloadable software and that it was in fact offering a comprehensive service experience or solution with help of technology embedded in the software.

Aggrieved by the impugned order under Section 197 of the Act, the Assessee Company filed a writ petition before the Hon'ble Delhi High Court.

Judgment of the Hon'ble Delhi High Court

The Hon'ble Delhi High Court noted the Reseller Agreement and opined that SFDC India is appointed as non-exclusive reseller without any technology transfer. SDFC India is designated merely to act as Reseller means it was accorded the right to sell SFDC products distinct from what would constitute technical service.

[23] SFDC Ireland Limited [TS-175-HC-2024(DEL)]

It also observed that technical assistance and training provided by the Assessee Company to SFDC India is a concomitant to sale of principal products and aimed at equipping and educating the representatives of SFDC India to be in position to comprehensively brief potential customers. It also enables them to understand the various attributes and capabilities of SFDC Products so as to be informed when interacting with prospective customers.

The technical assistance and training mentioned in the Reseller Agreement do not bear the characteristics of conferring specialized or exclusive technical service. Further, it holds that technical assistance and training provided by Assessee Company does not constitute either the core or the foundational basis as there is no transmission of specialised knowledge or skill to SFDC India. The training and assistance was thus primarily aimed at the sale of SFDC products and customer related issues. Imparting training or educating a person with respect to the functionality and attributes of a software application does not amount to the rendering of technical service under the DTAA. Further, the Hon'ble High Court noted that it was undisputed from Agreement that Assessee has not transferred any intellectual property rights.

The tax authorities failed to allude to any material which establishes that software is being customized or specially designed for a consumer, which constitutes the basis of the consideration received. It relied on the judgment of Lionbridge Technologies LLC[24] wherein it was held that though the view taken at the stage of consideration of Section 197 application might undoubtedly be provisional, that cannot detract tax authorities from the obligation to examine and undertake a prima facie evaluation of whether the income was chargeable to tax at all.

It further held that to classify the receipts within the scope of Fees for Technical Services, it was incumbent upon the tax authorities to establish an indelible link between payment received by Assessee Company and said amount constituting 'consideration' for providing technical services. The tax authorities has not evaluated the claim for Nil or lower TDS as raised on the touchstone of whether the remittances made to Assessee was for customized technical services.

Further, the Hon'ble High Court noted that purchase price did not mention details of individual / institutional sales of application or subscription to platform but the Net Revenue of SFDC India. Hence, the purchase price was not linked to particular sale or access fee to platform. The tax authorities did not examine the various heads of revenue of SFDC India. The tax authorities are yet to examine whether remittance amounting to 2.75% of total Indian revenue of SFDC India would include supply of

[24] W.P (C) 3403/2023

customized technical services.

Consequently, the Hon'ble Delhi High Court set aside the impugned order and remitted the matter back for considering the application of Assessee Company after bearing the observations made by the Hon'ble Delhi High Court.

7. ***Hon'ble Madras High Court[25]:*** *Limitation period of Section 153C assessment to be reckoned from the date of satisfaction note / deemed date of handing over documents even in case of same AO; Amendment in "books of account" definition is clarificatory in nature and not prospective.*

Background

A search was conducted at the premises of M/s Mohanlal Jewellers Pvt. Ltd. ("searched person") on 10.11.2020. During the search, customized software named "J Pack" was found which was being used for recording unaccounted gold and cash transactions along with a pen drive related to 'J Pack'. In one of the statements recorded during the search proceedings, the accountant of the searched person stated that the pen drive contained account data of various other parties ("other persons") for the AY 2016-17 to AY 2019-20. The Ld. AO for the searched person and the other persons was one and the same. A satisfaction note was recorded by the Ld. AO in the case of the other persons after completion of assessment proceedings under Section 153A of the Act in the case of the searched persons.

Subsequently, notices were issued to the other persons referred above under Section 153C of the Act and assessment was completed by passing order under Section 153C of the Act on 31-03-2023. Various Petitions were filed before Hon'ble Madras High Court by the "other persons" against these orders passed under Section 153C

[25] LKS Gold House Pvt Ltd V/s Deputy Commissioner of Income Tax [TS-198-HC-2024(MAD)]

of the Act contending that the said orders were passed beyond the limitation period and the proceedings have been wrongly initiated based on the information which does not qualify as "books or books of accounts" as defined under Section 2(12A) of the Act.

It was contended that prior to amendment of Section 2(12A) of the Act by the Finance Act, 2022, definition for 'books or books of accounts' did not include ledgers kept in electronic or digital forms in a software application and hence, data stored in pen drive/ hard disc of a laptop or computer were not books or books of account for the purpose of Section 153C of the Act. Further, it was contended that procedure under Section 65B of Indian Evidence Act, 1872 ("the Evidence Act") was not followed and hence, material found during the search cannot be relied upon as held by the High Court in the case of Vetrivel Minerals.

For the limitation period, the Assessee challenged the order under Section 153C read with third proviso to Section 153B(1) of the Act by relying upon judgment of Hon'ble Supreme Court in case of Super Malls and stated that the time-limit to pass the order under Section 153C of the Act was expired on 31.03.2022 i.e. twelve months from the end of the FY in which search was conducted (10.11.2020) since the Ld. AO for 'searched party' and 'other persons' was the same.

Judgement of the Hon'ble Madras High Court

The Hon'ble Madras High Court held that the amendment to definition of "books or books of accounts" in Section 2(12A) by Finance Act, 2022 is clarificatory and will apply retrospectively. The Hon'ble Madras HC held that the definition in Section 2(12A) was always an inclusive one and the amendment by Finance Act, 2022 by substituting the words "in written form or as print-outs of data stored" with "in written form or in electronic form or in form or in digital form or as print-outs of data stored in such electronic form or in digital form" was intended to merely align the definition with the current practice of using technological advancements in maintaining books of accounts which is evident from Explanatory Notes.

It was also observed that as per Section 1 of the Evidence Act which dealt with Short Title, Extent and Commencement, the provisions of the said Act are applicable to all judicial proceedings before any court. The assessment proceedings under the Act before the Ld. AO is a quasi-judicial and not a judicial proceeding and hence, requirement as per provisions of the Evidence Act particularly special provisions relating to evidence relating to Sections 65A, 65B and 66 were not relevant.

For the matter relating to the orders passed under Section 153C r.w.s 143(3) of the Act, the Hon'ble Madras High Court held that the time limit specified by CBDT in its Circular No 24/2015 dated 31.12.2015 were relevant only for preparation and

issuance of the "satisfaction note" under Section 153C of the Act and not for the purposes of computation of limitation for completing the assessment under Section 153C read with Section 143(3) of the Act. The Hon'ble Madras HC held that the time limit for completing assessment proceedings and passing the assessment order would be one year from the date on which the documents were handed over or deemed to have been handed over to the Ld. AO of the "other person", i.e. 31.03.2024.

The Hon'ble Madras High Court held that judgment of Hon'ble Supreme Court in Super Malls could not be read to mean that where the "AO" of the "searched person" and "AO" of the "other person" were one and the same, limitation for either preparing "satisfaction note(s)" or completing the assessment proceedings would have to coincide with the period for completing the assessment of the "searched person". In such a case, it should be construed that the officer concerned was wearing two different hats - one as the "assessing officer" of the "searched person" and one as the "assessing officer" of the "other person". Accordingly, Petitions filed were dismissed by the Hon'ble Madras High Court.

The Hon'ble Kolkata ITAT held that since the Assessee possesses tax residency certificate of UK, the Assessee deserves DTAA benefit under Section 90 of the Act. Thus, the claim made by the Assessee is found to be correct and appeal filed by the Assessee is allowed.

8. ***Hon'ble Raipur ITAT[26]:*** *Ld. AO was justified in invoking provisions of section 56(2)(viib) for issue of preference shares to director and ex-director and that method of valuation for preference shares should be adopted as prescribed under Rule 11UA(1)(c)(c) of the Rules.*

Background

During the AY 2017-18, Avinash Developers Pvt. Ltd (the Assessee) had issued 100 per cent non-cumulative convertible redeemable preference share at a premium to the director and ex-director of its company and valued the same on the basis of Net

[26] Avinash Developers Pvt. Ltd [TS-124-ITAT-2024(RAI)]

Asset Value (NAV) method. The Ld. AO observed that the preference shares are quasi debt in nature and invoked the provisions of Section 56(2)(viib) of the Act read with rule 11UA of the Rules; thereby adopting Discounted Cash Flow (DCF) method for determining the value of preference shares.

Accordingly, the Ld. AO made an addition of the excess premium to the returned income of the Assessee. On appeal, the CIT (A) upheld the method adopted by the Assessing Officer. Aggrieved by the Appellate Order, the Assessee filed an appeal before the Tribunal.

Decision of the Hon'ble Raipur ITAT

The Hon'ble Raipur ITAT observed that in the absence of any exception as regards the applicability of Section 56(2)(viib) to any specific class of persons, the claim of the Assessee that Section 56(2)(viib) cannot be invoked in case of issuance of preference shares to the director and ex-director of the Assessee upon establishing the genuineness, cannot be accepted. In this connection, the Hon'ble Raipur ITAT observed that a statutory provision has to be construed as per the rule of strict literal interpretation and it relied upon the judgment of Hon'ble Supreme Court in New Noble Educational Society v The Chief Commissioner of Income Tax and Anr., [CA No.3793 to 3795 of 2014, dated 19-10-2022] wherein it was held that if the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based on the surmise that the Parliament or the legislature intended it to be so. Hence, it is only in cases of ambiguity that the court can use other aids to discern the true meaning. Where the statute is clear and the words are plain, the legislation has to be given effect in its own terms. Regarding the nature of preference shares, the Hon'ble Raipur ITAT held that they don't confer ownership stakes, and rejected the argument that their conversion option made them parallel to equity shares.

As regards the valuation methodology, ITAT observed that the determination of the FMV of the preference shares could be traced in Rule 11UA(1)(c)(c) of the Rules. As per the Rule, preference share is to be valued at the estimated price that it would fetch if sold in the open market on the valuation date, as supported by a report from a specified accountant or a merchant banker. The applicability of "Explanation (a)(i)" to Section 56(2)(viib) of the Act which provided that the FMV of the shares be determined in accordance with the methods prescribed was confined to the determination of FMV of unlisted equity shares. This cannot be extended to determining the FMV of preference shares.

Accordingly, the Hon'ble Raipur ITAT directed the tax authorities to re-determine the FMV of the subject preference shares in the backdrop of aforesaid observations after affording a reasonable opportunity of being heard to the Assessee.

9. ***Hon'ble Mumbai ITAT[27]:*** *Admission of additional evidence whereby the assessee proved the genuineness and creditworthiness of the funds introduced in the company by way of share capital and short-term borrowing and accordingly, deletion of addition made under Section 68 of the Act.*

Background

Next Avenue Ventures Pvt Ltd ('the assessee') is a private limited company and e-filed its return of income for AY 2019-20. Order under Section 143(3) r.w.s.144B of the Act was passed making the addition of Rs. 223.10 crore under Section 68 of the Act read with Section 115BBE of the Act. The said addition was made on account of the Assessee failed to explain the genuineness and creditworthiness of introduction of share capital of Rs. 24.99 crore and short term borrowing of Rs.198.10 crore.

During the assessment proceedings, the Assessee provided the Return of Income (ROI) of Investor and bank statement reflecting receipts towards share capital from investor who was also director of the Assessee. The ROI and bank statements were examined by the Ld. AO and asked Assessee to justify the investment made by the investors as the income as per ROI was not justifiable for Investment of Rs. 24.99 crore. Further, the Ld. AO made enquiry by issuing notice under Section 133(6) of the Act to the investor who did not respond to the notice. Accordingly, the Ld. AO made addition of Rs. 24.99 crore under Section 68 of the Act for not proving the genuineness of transaction as well as creditworthiness of investor for introduction of share capital.

Also, the Ld. AO made addition of Rs. 198.10 Crore under Section 68 of the Act on account of short term borrowing as the Assessee only submitted the date and mode of receipts of such borrowing during the assessment proceedings. No further response was submitted by the Assessee to prove genuineness, creditworthiness and source of fund of such borrowings which are essential ingredients of Section 68 of the Act.

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[27] Next Avenue Ventures Pvt. Ltd [TS-144-ITAT-2024(Mum)]

Aggrieved by the addition made, the Assessee preferred an appeal before Hon'ble CIT(A). Further, the Assessee filed additional evidences and stated that such evidences could not be submitted during the assessment proceedings due to a lockdown imposed in the state of Maharashtra and also stated that the place where the Assessee's office was located was sealed as it was identified as a containment zone which resulted in the Assessee being unable to furnish required information and documents. Also, the Assessee submitted before Hon'ble CIT(A), the order of state government imposing lockdown.

The Hon'ble CIT(A) noted that the Assessee was prevented due to sufficient cause from submitting the documents requested during the assessment proceedings. The Hon'ble CIT(A) asked the Ld. AO for remand report. In the remand report, tax authorities objected to the admission of additional evidence stating that the Assessee was given enough opportunities during the assessment proceedings. The Ld. AO also commented on the merits of the additions made in the remand report.

The Ld. AO issued notice under Section 133(6) of the Act to the investor calling for documents such as bank statement of investor, documentary proof for genuineness of transaction, source of fund from which investment was made of Rs. 24.99 crore. In response to the notice, the investor submitted all the necessary documents to prove the genuineness of transaction, creditworthiness of investor and source of funds from which such investment was made.

In relation to addition of Rs. 198.10 crore, enquiry was made by the Ld. AO with the lender party of the Assessee, the lender party provided all the necessary documents and details of source of funds, the Ld. AO further made enquiry with the parties from whom lender borrowed money, those parties also responded to the notice and submitted all necessary documents requested. Further, the Assessee submitted that the repayment of loan was made in subsequent years through proper banking channel. The Ld. AO accepted these facts and no adverse comments were made in the remand report. The Hon'ble CIT(A) applying the provisions of Rule 46A of Rules admitted the additional evidence submitted by the Assessee and deleted both the additions of Rs. 223.10 crores. Tax authorities filed an appeal against the order of the CIT(A) before the Mumbai ITAT.

Decision of the Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT observed that Assessee's office was located in containment zone during Covid-19 pandemic, and for the same reason it was sealed. Thus, the Assessee was prevented by sufficient cause from furnishing information and evidences during the assessment proceedings. Therefore, the Hon'ble CIT(A) was correct in admitting additional evidences.

For the addition on account of introduction of share capital, the Hon'ble Mumbai ITAT noted that the Assessee as well as investors has discharged its onus by providing all the necessary documents to prove the genuineness of transaction, creditworthiness and source of funds from which investment made and also the Ld. AO has not provided any evidence to prove any adverse comment in the remand report. Therefore, it was held that the Hon'ble CIT(A) is correct in deleting the addition of Rs. 24.99 crore on account of introduction of share capital.

Also, the Hon'ble Mumbai ITAT observed that the source is not required to be established with respect to loan transactions prior to 01.04.2023 as amendment was made to Section 68 requiring to prove source of source of funds is effective from 01.04.2023 with regards to loan borrowed for the year under consideration. However, the Assessee has also complied and explained the source of loan taken.

The Hon'ble Mumbai ITAT further noted that the Assessee had taken loan of Rs. 348 crore and after repayment of part of the borrowings, closing balance was Rs. 198.10 crore which was doubted by the tax authorities and not the total sum credited in the books. Thus, the Hon'ble Mumbai ITAT holds that the addition of part of the amount i.e., Rs. 198.10 crores are not sustainable when part of the amount credited to lender party has been accepted by the tax authorities. The Hon'ble Mumbai ITAT held that Hon'ble CIT(A) has not made any error in deleting the addition made by the AO and accordingly, appeal by the tax authorities was dismissed.

10. *Hon'ble Kolkata ITAT[28]: Deleted the addition of deemed dividend in the hands of the borrower company and instead held that deeming provision under Section 2(22)(e) is attracted in the hands of beneficial owner holding substantial interest in the Assessee as well as the lender company*

Background

Apeejay Surrendra Management Services Pvt. Ltd. (the Assessee) is engaged in the

[28] Apeejay Surrendra Management Services Pvt. Ltd [TS-130-ITAT-2024(Kol)]

business of Brand Owning and Consultancy. For AY 2013-14, the Assessee has filed a return declaring loss of Rs. 2.16 crore. During the year under consideration, the Assessee received a sum of Rs. 5.50 crore as loans / advances from other group company namely Apeejay Pvt. Ltd. (APL). The Assessee is not a shareholder in APL. However, the Ld. AO noted that there was a common shareholding namely Kathua Steel Works Pvt. Ltd. (KSWPL) which holds substantial interest in both the companies - Assessee (57.86%) and the lender company (99.96%). The accumulated profits available for distribution in the books of lender company was Rs. 36.91 crore. Thus, in view of these facts the Ld. AO treated the amount of loans / advances received by the Assessee from APL as deemed dividend u/s 2(22)(e) of the Act since there was common shareholder having substantial interest in both APL and the Assessee.

The Assessee submitted that it is not a shareholder in APL and therefore, no addition can be made in the hands of the Assessee by applying the provisions of section 2(22)(e) of the Act. The basis adopted by Ld. AO for making an addition i.e. a common shareholder having substantial interest in both APL and the Assessee; does not meet the test under Section 2(22)(e) of the Act.

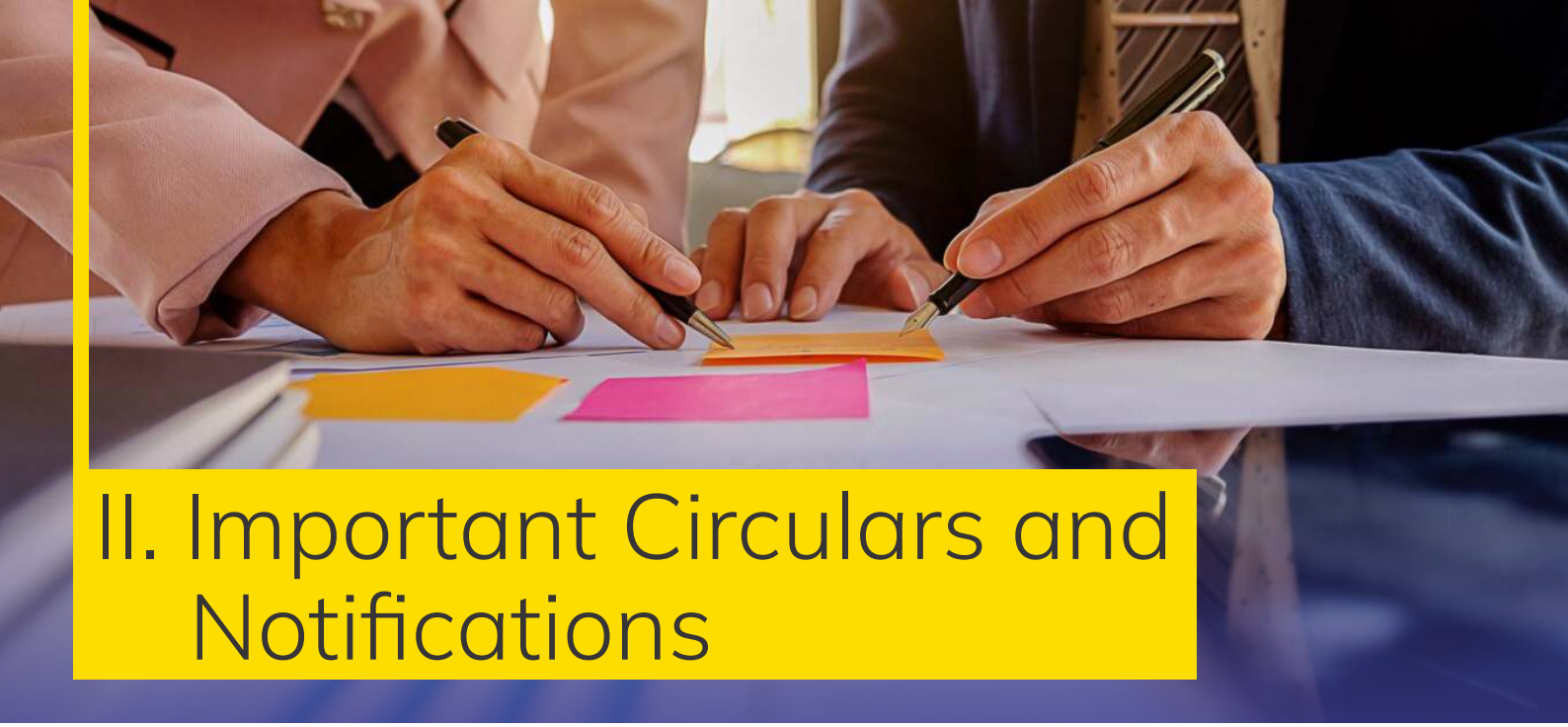
The tax authorities strongly placed reliance on the decision of the Hon'ble Supreme Court in the case of National Travel Services to canvas the proposition that is not necessary that one has to be a registered shareholder in order to attract the provisions of the Section 2(22)(e) of the Act.

Decision of the Hon'ble Kolkata ITAT

In light of the provisions of Section 2(22)(e) of the Act, if the payment is directly received by the shareholder, then the deemed dividend needs to be added in the hands of the beneficial shareholder. In the present case, KSWPL is in a position to control the affairs of both lender (APL) and receiver (the Assessee) by way of holding more than 20% of shareholding in both the companies.

The Hon'ble Kolkata ITAT noted the observations and findings made by the Hon'ble Supreme Court in case of National Travel Services, that to attract the provision of Section 2(22)(e) of the Act, the person holding substantial interest should be beneficial owner of shares and not necessarily member of the company on its register.

However, the Hon'ble Kolkata ITAT deleted the addition in respect of deemed dividend in the hands of the Assessee and held that deeming provisions under Section 2(22)(e) is attracted in the hands of beneficial owner (KSWPL) holding substantial interest in the Assessee as well as the lender company.



II. Important Circulars and Notifications

1. **Hon'ble CBDT exempts 15% portion of the eligible donations made by a trust / fund / institution to another trust / fund / institution from tax since it is not available for investment in modes specified under Section 11(5) of the Act[1]**

   The synopsis of the Circular are as follows:

   1.1. The Finance Act, 2023 has amended Section 10(23C) of the Act [covering any fund or institution or trust or any university or any other educational institution or any hospital or other medical institution ('first regime')] and Section 11(1) of the Act [covering any trust or institution registered under Section 12AA or Section 12AB of the Act ('second regime')] to provide that eligible donations made by a trust / institution in either of regime, shall be considered as application for charitable or religious purposes only to the extent of 85% of such donations.

   1.2. The Hon'ble CBDT has received representations over the issue of taxability in respect of balance 15% of the donation made to eligible trusts / funds / institutions or whether the said balance donation would be eligible for 15% accumulation since the funds would not be available having been already disbursed.

   1.3. In response to the representations, the Hon'ble CBDT has clarified that eligible donations made by a trust / fund / institution to another trust / fund / institution under either regime shall be treated as application to the extent of 85%. The balance 15% of such donations are not required to be invested in the modes specified under Section 11(5) of the Act as the entire amount has been donated to trust / fund / institution of either regime and is accordingly eligible to exemption. Accordingly, the entire donations would be eligible for exemption under either regime. Therefore,

[1] Circular No. 3/2024 dated 06.03.2024

the balance 15% of the such donations shall also be considered as application, in view of the total donations made by the trust.

2. Hon'ble CBDT notifies the revision in certain statutory Forms[2]

The Hon'ble CBDT has introduced significant amendments in certain statutory forms by exercising powers conferred by Section 95 read with Section 44AB and Section 92E of the Act. The following amendments are made:

2.1. Tax Audit Report in Form 3CD would require the following additional disclosures:

- The New domestic manufacturing co-operative society (as per Section 115BAE) is now covered under the reporting of concessional regime of tax;
- The income on presumptive basis on exercise of profession (Section 44ADA) is now included in the reporting of profits and gains on presumptive basis.
- The adjustment made to WDV under the various provisions of concessional rate of tax regime are incorporated for reporting.
- Reporting of deduction under Section 35ABA and facility to include deduction under any other relevant section
- The scope of disclosure in respect of expenditure by way of penalty or fine is widened to include:
    a. expenditure for any purpose, which is offence, or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in or outside India)
    b. expenditure incurred to compound an offence under any law in or outside India
    c. expenditure incurred to provide any benefit or perquisite to a person (irrespective of involved in business activities) and acceptance of such benefit or perquisite by the person is in violation of any law governing the conduct of such person.
- The provision of Section 43B(h) are included under the Section 43B class reporting.

2.2. Transfer Pricing Audit Report in Form 3CEB

- The provision with respect to specified domestic transactions entered by assessee being a new domestic manufacturing co-operative society

[2] [Notification No. 27/2024 /F. No. 370142/3/2024-TPL]

with persons referred to in Section 115BAE(4) of the Act are included for reporting purpose.

2.3. Application Form for exercise / renewal of Tonnage Tax Scheme in Form 65

- The clause of self-certification (is inserted in Verification portion) by the Assessee on being a unit of International Financial Service Centre (IFSC) and on filing the application within 3 months from the date of non-applicability of deduction under Section 80LA of the Act.
- The Annexure to the Form 65 is amended to include the confirmation on deduction claimed under Section 80LA of the Act and date of such claim.

3. Hon'ble CBDT amends paragraph 2 in Article 13 of the convention between the Republic of India and kingdom of Spain relating to Royalties and Fees for Technical Services (FTS)[3]

The Central Government has amended the Article 13 (2) of India-Spain DTAA by capping the rate of tax on Royalties and FTS at lower of domestic tax rate or 10% in case of royalty and FTS received by a beneficial owner, by exercising the powers conferred by Section 90 of the Act. This amendment is in accordance with the Paragraph 7 of the Protocol to the India-Spain DTAA and in the backdrop of DTAA between India and Germany (OECD Member), which states if India restricts the taxation on royalties or FTS pursuant to any DTAA signed with a third nation being member of OECD Convention after 01.01.1990, then the tax rate specified in such DTAA with Member of OECD Convention shall apply from later of date of India-Spain DTAA or such DTAA with Member of OECD Convention.

Prior to this amendment, as per the Article 13(2) of the India-Spain DTAA, the FTS and other royalties (i.e., excluding royalties subject to tax @ 10% which are relating to payment for use of, or right to use, industrial, commercial or scientific equipment) were subject to tax at 20% of gross amount of such FTS or royalties.

Due to this amendment, FTS and royalties under the India-Spain DTAA shall be subject to tax at the rate of 10%. This amendment shall be applicable with effect from AY 2024-25.

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[3] [Notification No. 33/2024 F.No. 503/2/1986-FTD-I]

III. SEBI Notification

SEBI's Regulatory Framework for Social Stock Exchange (SSE)

In 2022, SEBI introduced a regulatory framework for Social Stock Exchanges (SSE), with subsequent amendments to SEBI Regulations. Notably, Non-Profit Organizations (NPOs) seeking to raise funds must be registered with an SSE.

In August 2023, SEBI proposed amendments to ICDR and LODR Regulations, addressing challenges faced by NPOs. These were followed by amendments on 21 December 2023 and a circular on 28 December 2023, highlighting key changes:

1. **Registration Requirements:** NPOs must hold registration certificates under specific sections of the Income Tax Act, valid for at least 12 months. Applications should detail pending notices or scrutiny cases from regulatory/statutory authorities and any fines/penalties paid or appealed within seven days.
2. **Disclosure of Past Social Impact:** NPOs must provide details of past social impact, emphasizing trends in key metrics like beneficiary numbers, cost per beneficiary, and administrative overheads.
3. **Conditions for ZCZP Issuance:** Zero Coupon Zero Principal (ZCZP) instruments must be issued only in dematerialized form, with restrictions on transferability until the instrument's expiry. Minimum issue and application sizes have been revised to INR 50 Lakh and INR 10,000 respectively, with a 75% minimum subscription requirement. Under-subscription details and refund procedures are outlined.
4. **Social Impact Assessor:** The role of 'Social Auditor' is now termed 'Social Impact Assessor' in the amended regulations.
5. **Other Considerations:** The circular also outlines procedures for public issuance of ZCZP instruments and required contents for fundraising documents.

These amendments aim to streamline the process for NPOs, ensuring transparency and efficiency in SSE operations while fostering social impact investment.

(Source: SEBI notifications no. SEBI / LAD NRO / GN / 2023 / 161, SEBI / LAD NRO / GN / 2023 / 162, and circular no. SEBI/HO/CFD/PoD 1/P/CIR/2023/196)

SEBI's Proposed Regulations on Market Rumor Verification

In June 2023, SEBI amended Regulation 30(11) of the LODR Regulations, making it mandatory for certain listed companies to confirm, deny, or clarify market rumors. Initially applicable to the top 100 listed entities by market capitalization from June 1, 2024, and extended to the top 250 entities from December 1, 2024.

SEBI issued a consultation paper on December 28, 2023, proposing a framework for regulating the verification of market rumors. This included:

1. **Criteria for Verification:** SEBI proposed amending the requirement for verifying market rumors. Instead of just "material" events, rumors should be verified if there's a significant price movement in the listed entity's securities. The magnitude of the movement would be determined based on factors like the securities' price range and benchmark index movements.
2. **Timeline for Verification:** Rumors must be verified and responded to within 24 hours of a significant price movement, differing from the previous requirement of 24 hours from mainstream media reporting.
3. **Consideration of Unaffected Price:** SEBI proposed considering the unaffected price when confirming market rumors due to material price movement. This would be crucial in determining the transaction price of securities.
4. **Obligations on Key Personnel:** Promoters, directors, Key Managerial Personnel (KMP), and senior management are proposed to be mandated to provide timely and accurate responses to queries or explanations related to rumors involving them.
5. **Classification of Unverified Information:** SEBI suggested that if a market rumor remains unverified but the information is classified as Unpublished Price Sensitive Information (UPSI), insiders should not use it as a defense that it was "generally available." Such information would continue to be treated as UPSI.

The consultation paper sought comments until January 18, 2024. These proposed regulations aim to enhance transparency and timely disclosure in the market, benefiting investors and stakeholders.

IV. Compliance Calendar Apr. 24

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th April	March 2024	TCS Payment	Non-Government Deductors
02	30th April	March 2024	TDS Payment	Non-Government Deductors

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th April	March 2024	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th April	March 2024	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th April	March 2024	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2023-24. b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2023-24 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th April	January 2024 to March 2024	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th April	March 2024	GSTR – 6 (ISD)	Person registered as ISD
06	13th April	March 2024	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
07	20th April	March 2024	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2023-24 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2023-24 and not opted for QRMP scheme
08	20th April	March 2024	GSTR - 5A (OIDAR)	OIDAR services provider

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
09	22nd April	January 2024 to March 2024	GSTR – 3B - QRMP scheme- Monthly payment *	Aggregate Turnover is up to Rs. 5 crores (Refer Note 1)
10	24th April	January 2024 to March 2024	GSTR – 3B - QRMP scheme- Monthly payment **	Aggregate Turnover is up to Rs. 5 crores (Refer Note 2)

Note 1. Summary Return of January-March quarter by Quarterly filers in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

Note 2. Summary Return of January-March quarter by Quarterly filers in Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

* 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

** 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. Provident Fund (PF) / Employee State Insurance Corporation (ESIC)

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	15th April	March 2024	PF/ESIC Payment	All Assessee to whom respective laws of PF / ESIC are applicable
02	25th April	March 2024	PF Monthly Return	
03	30th April	FY 2023-24	PF Annual Return	

D. FEMA Compliance

Sr. No.	Due Dates	Particulars	Concerned (reporting) Period	Applicable to
01	7th April	ECB 2 Return (External Commercial Borrowing)	March 2024	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.

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