BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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Table of Contents

Glossary 01

I. Direct Taxes 02

A. Corporate Tax 02

1. **SC:** Provides clarification on the procedure for admission of appeal under section 260A before the High Court. 02
2. **Bombay HC:** Quashes reassessment notice issued after 3 years without proper approval. 03
3. **Bombay HC:** Holds order passed under section 153C is invalid, inter-alia, without DIN and holds that non-appearance of return filed by the Assessee on ITBA portal cannot invoke best judgement assessment. 05
4. **Telangana HC:** Notice under section 148A can only be issued in faceless mode post notification of scheme called e-assessment of Income Escaping Assessment Scheme, 2022. 06
5. **Gujarat HC**: Holds that allotment of shares does not attract provisions of section 56(2)(vii)(c) of the Act. 08
6. **Chennai ITAT:** Dividend distribution tax applies to shares buybacks through a scheme of arrangement approved by the Court. 09

B. International Tax 11

1. **SC:** Allow ability of tax-credit on dividend exempt under Oman's tax law. 11
2. **SC:** Provisions of section 206AA cannot override provisions of DTAA. 12
3. **Delhi ITAT:** Grants exemption under the India-Mauritius tax treaty on the disposal of equity shares that arose from the conversion of cumulative convertible preference shares (CCPS). The CCPS were issued prior to 1 April 2017 and the conversion happened after that date. 13

C. Transfer Pricing **15**

1. **Telangana HC:** Holds that the draft assessment order accompanied by notice of demand and penalty notice would violate the mandate of section 144C and hence, would make the assessment proceedings bad in law. 15
2. **Bangalore ITAT:** Accepts foreign AE as tested party. 16
3. **Mumbai ITAT:** Observes that the corporate guarantee to be reviewed regularly or at-least once in 3 years. 16

D. CBDT: Notifications/Circulars issued by CBDT **17**

1. CBDT issues FAQ's for filling Form 10B and 10BB audit reports in case of trust registered under section 12AB and 10(23C) respectively as on 05th September 2023. 17
2. CBDT notifies the transfer of certain capital assets not to be regarded as transfer under section 47. 17
3. CBDT extends the due date for furnishing audit reports in Form 10B/Form 10BB for A.Y. 2023-24 to October 31, 2023, from the earlier due date of September 30, 2023. Additionally, the due date for furnishing ITR-7 for A.Y 2023-24 has also been extended to November 30, 2023, from the earlier due date of October 31, 2023. 18
4. CBDT notifies valuation method and guidelines for the purpose of section 56(2) (viib) 19
5. CBDT issues guidelines for submitting an application for Nil or lower TDS through TRACES. 20
6. CBDT notifies Form 6D for inventory valuation report under section 142(2A). 20
7. CBDT notifies Form 10-IFA under section 115BAE for new manufacturing co-operative societies. 21

II. Goods and Services Tax **22**

1. Thirty-one GST appellate tribunal benches to be set up across country. 22
2. Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by specific unregistered persons. 22
3. Foreign OIDAR firms providing services to unregistered persons must register, pay GST in India from October 1. 23
4. Whether benefit of Input tax credit ('ITC') can be given to the recipient even if said ITC not reflected in GSTR-2A? 23

III. Audit and Assurance **24**

1. Audit Trail Requirement and way forward. 24
2. Expert Advisory Committee Opinion: Capital or Revenue Expenditure on Repairs to Plant and Machinery. 25

IV. Amendment in Rule 11UA of Income Tax Rules, 1962 **27**

V. Compliance Calendar for the month of October 2023 **33**

Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
AE	Associated Enterprise
Act	Income-tax Act, 1961
AO	Assessing officer
AY	Assessment Year
BEPS	Base Erosion and Profit Shifting
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income-tax
CCPS	Cumulative Convertible Preference Shares
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CBDT	Central Board of Direct Taxes
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement
DCIT	Deputy Commissioner of Income Tax
HC	High Court
Hon	Hon'ble
ITC	Input Tax Credit
ITBA	Income Tax Business Application
ITAT	Income Tax Appellate Tribunal
IFSC	International Financial Services Centre
JV	Joint Venture
MCA	Ministry of Corporate Affairs
PE	Permanent Establishment
PY	Previous Year
PLI	Profit Level Indicator
PCIT	Principal Commissioner of Income Tax
PCCIT	Principal Chief Commissioner of Income Tax
SC	Supreme Court
TDS	Tax Deducted at Source
TRC	Tax Residency Certificate
TOLA	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
TPO	Transfer Pricing Officer

I. Direct Taxes

A. Corporate Taxes

1. ***Supreme Court[1]:*** *Provides clarification on the procedure for admission of appeal under section 260A before the High Court. The Hon'ble Court set asides the High Court's ruling due to non-compliance with section 260A and remanded the matter to the High Court for reconsideration of the appeal.*

Background

The Supreme Court, in this case, examined the issue of whether an appeal filed before the High Court can be maintained without first formulating a substantial question of law as per the requirements of section 260A of the Act.

Facts of the Case

In this case, the Hon'ble High Court heard the appellant's appeal based on the merits of the case before any substantial question of law was formulated. Subsequently, the question of law was drafted, and the appeal was allowed on its merits.

Judgement of the Hon'ble Supreme Court

a) An appeal before the high court is maintainable on a substantial question of law (not on a question of fact or only a question of law).

b) The High Court, when entertaining an appeal, must formulate a substantial question of law and then admit the appeal; thereafter on the question so formulated the matter must be disposed of.

[1] Bikram Singh vs. CIT [TS-502-SC-2023]

c) Issuance of notice prior to admission without framing substantial question of law is not contemplated under section 260A of the Act.

2. ***Bombay High Court[2]:*** *Quashes reassessment notice issued after 3 years without proper approval.*

Background

As per section 151 of the Act, "specified authority" for the purposes of section 148 and section 148A shall be the Principal Commissioner or Principal Director or Commissioner or Director ('PCIT') if three years or less than three years have elapsed from the end of the relevant assessment year. If more than three years have elapsed from the end of the relevant assessment year, in that case, the specified authority shall be the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General ('PCCIT').

For AY 2016-17, a controversy arose as to who is the specified authority for seeking approval - the PCIT or the PCCIT? And if the approval has been granted by the wrong specified authority what impact it will have on the proceedings?

Facts of the case

The petitioner/assessee is registered with the Reserve Bank of India (RBI) as a non-banking finance company and is classified as an asset finance company. The assessee's case was reopened for AY 16-17 and the approval/sanction for order under section 148A(d) of the Act was granted on 31st July 2022 by the PCIT.

The assessee contended that for the notice issued under section 148 read with order under section148A(d) sanction/approval was given by the wrong specified authority under section 151 (i.e. PCIT) instead of PCCIT and hence the reopening of assessment was bad in law.

Judgement of Hon'ble High Court

a) The first proviso to section 148 of the Act refers to the approval of the specified authority being obtained before a notice under section 148 of the Act can be issued. Explanation 3 to section 148 of the Act specifies that the meaning of the term 'specified authority' as provided for in section 151 of the Act is to apply for the purpose of section 148.

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[2] Siemens Financial Services Pvt Ltd vs. PCIT [TS-516-HC-2023(BOM)

b) As per section 151 of the Act, the 'specified authority' who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year.

c) The present petition relates to the AY 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on 31st March, 2020 the approval as contemplated in section 151(ii) of the Act (i.e. PCCIT) would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax – 8' ('PCIT-8') which is bad in law as the approval should have been obtained in terms of section 151(ii) (i.e. PCCIT) and not section 151(i) of the Act (i.e. PCIT) and the PCIT-8 cannot be the specified authority as per section 151 of the Act. Hence, such an approval would be bad in law.

d) The Assessing Officer cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, w.e.f. 1st April 2021.

e) TOLA only seeks to extend the period of limitation and does not affect the scope of section 151.

f) The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside.

g) Any notice issued without the sanction of the correct sanctioning authority will be invalid.

Our Comments

The ruling in the case of Siemens Financial Services will have significant ramifications particularly for notices issued under section 148 following the Supreme Court decision in case of Ashish Aggarwal[3] and also in general. It is crucial to conduct a comprehensive analysis of the potential impact of this ruling on all reopened assessments post Supreme Court decision and develop a constructive strategy to identify appropriate defenses.

3. ***Bombay High Court[4]:*** *Holds order passed under section 153C is invalid on various counts and holds that non-appearance of return filed by the Assessee on ITBA portal cannot invoke best judgement assessment.*

Background

The Assessee was engaged in the business of financing (giving loans to parties) and in the business of trading in shares, property and broking. Income tax return was filed and bad debts of INR 360.59 crores had been written off. An assessment order under section 143(3) was passed accepting the claim of write off.

Later, proceedings under section 153C of the Act were initiated further to a search action conducted on the premises of at one of the parties whose debt the Assessee had written off. The department could not see the return filed by the Assessee in response to notice under section 153C on the ITBA portal. On account of this, an order under section 153C read with section 144 of the Act was passed disallowing the written off amount. This order was issued without a Document Identification Number (DIN). The Assessee filed a writ petition before the Hon'ble Bombay High Court challenging this order on various grounds.

Judgement of Hon'ble High Court

a) The income-tax authorities had erroneously proceeded on the basis that no return had been filed by the Assessee in response to notice under section 153C. However, the petitioner had in fact filed its return of income; therefore section 144(1)(a) of the Act could not be applied.

b) Further, the income-tax authorities had neither issued a notice under section 143(2) nor granted the Assessee an opportunity under 1st proviso to section 144.

[3] Ashish Agarwal vs. Union of India & Ors. [TS-339-SC-2022]

[4] Ashok Commercial Enterprises vs. ACIT [TS-506-HC-2023(BOM)]

c) It is a jurisdictional condition precedent to passing an order under section 153C read with section 143(3) of the Act that a notice under section 143(2) of the Act must be issued as held by the Hon'ble Supreme Court in case of Hotel Blue Moon[5]. However, no notice under section 143(2) was issued.

d) Circular 19/2019 sets out five exceptional circumstances where the requirement of mentioning a DIN in an order/ communication may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing and with the prior written approval from relevant authorities. Also, if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format. The assessment order was invalid also on account of not adhering to these conditions listed in Circular 19/2019.

e) If original assessment has not abated and no incriminating material has been found relating to the Assessee in the course of proceedings under section 132 of the Act in the case of debtor whose debt was written off by the Assessee, income-tax authorities cannot assume jurisdiction to assess/re-assess the Assessee under section 153C.

4. ***Telangana High Court[6]:*** *Notice under section 148A can only be issued in faceless mode post notification of scheme called e-assessment of Income Escaping Assessment Scheme, 2022.*

Background

An amendment to complete the re-assessment proceedings in faceless manner was brought by the Finance Act, 2021. CBDT issued notification dated 29 March

[5] Hotel Blue Moon vs. ACIT (188 Taxman 113(SC).

[6] Kankanala Ravindra Reddy vs. Department [TS-539-HC-2023(TEL)]

2022 notifying the e-Assessment of Income Escaping Assessment Scheme, 2022 with effect from same date.

In the given case, notice under section 148 of the Act were issued on 29 July 2022, for AY 2016-17, by the Jurisdictional Assessing Officer. An issue arose "whether the impugned order under section 148A (d) as well as the notice under section 148 of the Act could be issued by the local jurisdictional officer, rather than the faceless assessment."

Judgement of the Hon'ble High Court

a) Sub-section 1 of section 151A was inserted with effect from 1 November 2020 for making faceless assessment of income escaping assessment.

b) CBDT in exercise of its power conferred under sub-section (1) and (2) of section 151A framed a scheme called e-assessment of Income Escaping Assessment Scheme, 2022.

c) Plain reading of the scheme would exhibit that the re-assessment has to be done in a faceless manner.

d) After the introduction of the above scheme, it becomes mandatory for the revenue to conduct / initiate proceedings pertaining to re-assessment under section 147, 148 and 148A of the Act in the faceless manner.

e) In the present case, both the proceedings i.e. the impugned proceedings under section 148A of the Act, as well as the consequential notices under section 148

of the Act were issued by the local jurisdictional officer and not in the prescribed faceless manner.

f) For the aforesaid reasons, the proceedings are neither tenable nor sustainable.

Our Comments

This decision will have far reaching implications post the Supreme Court decision in the case of Ashish Aggrawal[7] wherein the Hon'ble Supreme Court had held all defences available under the substituted provisions under the Finance Act, 2021 would be available and that the income-tax department will proceed further subject to the compliance of all the procedural requirements as per the amended law by Finance Act, 2021.

This decision clearly establishes that what was grandfathered by the Supreme Court was the notice earlier issued under section 148 be treated as the show cause notice issued under section 148A(b). Thus, this decision lays down the principle that all procedural requirements have to be followed as per the law amended by Finance Act, 2021.

5. ***Gujarat High Court[8]:*** *Holds that allotment of shares does not attract provisions of section 56(2)(vii)(c) of the Act.*

Background

The issue under consideration in this case was whether the provisions of section 56(2)(vii)(c) of the Act can be invoked in respect of shares allotted to the Assessee proportionate to the share-holding in the company and due to renouncement of rights by relatives and third party.

Judgement of the Hon'ble High Court

a) The provisions of section 56(2)(vii)(c) will not be applicable to the issue of new shares. It is trite law that allotment of new shares cannot be regarded as transfer of shares.

b) In order to apply provisions of section 56(2)(vii)(c), there must be existence of property before receiving it. The term "receive" means "to get by a transfer, as to receive a gift, to receive a letter or to receive money and involves an actual receipt."

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[7] Ashish Agarwal vs. Union of India & Ors. [TS-339-SC-2022]

[8] Jigar Jashwantlal Shah vs. PCIT R/TAX Appeal No. 80 of 2023 with Appeal No. 96 0f 2023

c) There is vital difference between "creation" and "transfer of shares". The words "allotment of shares" having used to indicate the creation of shares by appropriation out of the unappropriated share capital to a particular person who has right to choose for such allotment. Therefore, there is a difference between issue of a share to a subscriber and the purchase of a share from an existing shareholder as in the first case, because, the first case is that of creation, whereas, the second is that of "transfer" entitle to the right in action.

d) Issue of new shares by company as a right-shares is creation of property and merely receiving such shares cannot be considered as a transfer under Section 56(2)(vii)(c) and accordingly, such provision would not be applicable on the issuance of shares by the Company in the hands of the allottee.

e) Explanatory note to the Finance Bill, 2010, also clarifies that section 56(2)(vii)(c) of the Act applies only in the case of transfer of shares.

6. ***Chennai ITAT[9]:*** *Dividend distribution tax (DDT) under section 115-O is required to be paid on shares buybacks through scheme of arrangement. It has been held that the consideration paid by the company is regarded as distribution of accumulated profit, which is subject to deemed dividend provisions under section 2(22)(d).*

Background

The Assessee had four non-resident shareholders, out of which three were based in the US and one in Mauritius. In the year under consideration (AY 2017-18), the Assessee acquired its equity shares from these shareholders on 18 May 2016 through a 'Scheme of Arrangement & Compromise' approved by the Madras High

[9] Cognizant Technology - Solutions India Pvt. Ltd vs. ACIT [TS-531-ITAT-2023(CHNY)]

Court under section 391 to 393 of the Companies Act, 1956. Therefore, the Assessee argued that the Scheme of Arrangement did not fall within the purview of DDT.

However, the income-tax authorities viewed this buyback transaction as capital reduction and held that the consideration received by the shareholders was in the nature of deemed dividend under section 2(22)(a) / 2(22)(d), and should be subject to DDT.

Decision of Hon'ble ITAT

a) The decision states that the scheme of arrangement under section 391-393 of the Companies Act, 1956 cannot be viewed as independent of any other provisions of the Companies Act. This is because the scheme itself states that it is not a buyback under Section 77A of the Companies Act and should therefore, fall back to section 100-104 of the Companies Act, leading to capital reduction.

b) The decision clarifies that to attract the provisions of dividend under section 2(22) (d), there should be a distribution to the shareholders on reduction of share capital to the extent accumulated profits. In the Assessee's case, the conditions of section 2(22)(d) are satisfied and hence, liable to DDT.

c) The decision observes that the transaction in question was conducted solely to artificially shift the shareholding base from USA to Mauritius with an aim of claiming treaty benefits under India-Mauritius DTAA and evading DDT.

Our Comments

This decision could have significant implications for transactions involving the buyback of shares under the 'Scheme of Arrangement & Compromises'. Additionally, the ruling underscores the importance of GAAR, judicial or codified, which has played a role in the outcome of the decision.

B. International Tax

1. ***Supreme Court[10]:*** *Allowability of tax-credit on dividend exempt under Oman's tax law.*

Background

In this case the Supreme Court dealt with the issue -

Whether the dividend income earned by the assessee is taxable, although exempted under Omani Tax Laws to entitle the assessee to the benefits of the Double Taxation Avoidance Agreement between India and Oman.

Facts of the Case

Assessee is a multi-state Co-operative Society registered in India. The Assessee entered into a joint venture with Oman Oil Company to form Oman Fertilizer Company SAOC (JV), a registered company in Oman under the Omani laws.

During the assessment proceedings, Assessing Officer allowed tax credit in respect of dividend income received by the assessee from the JV. The dividend income was brought to charge of tax under the Indian tax laws, however, exemption was granted under the Omani tax laws by virtue of the amendments made in the Omani tax laws.

Thereafter, the Principal Commissioner of Income Tax (PCIT) issued a show cause notice under section 263 of the Act on the ground the tax credit was erroneously granted to the Assessee under Article 25(4) of Double Taxation Avoidance Agreement between India and Oman (DTAA) as under the Omani Tax Law dividend income was not taxable.

Judgement of the Supreme Court of Spain

a) Article 25 (2) of the DTAA provides that where a resident of India derives income, which in accordance with this agreement, may be taxed in the Sultanate of Oman, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Sultanate of Oman, whether directly or by deduction.

b) Article 25 (4) clarifies that the tax payable in a Contracting State mentioned in clause 2 of the said Article shall be deemed to include the tax which would have

[10] Krishak Bharati Cooperative Ltd. Vs. PCIT [TS-533-SC-2023]

been payable but for the tax incentive granted under the laws of the Contracting State and which are designed to promote development.

c) As the Assessee has invested in the project in Oman and as the JV is registered as a separate company under the Omani laws, it is aiding to promote economic development within Oman.

d) The clarification issued by Sultanate of Oman, Ministry of Finance, exempting the dividend income is valid for interpretation for relevant clauses of DTAA, to exempt the Assessee from payment of dividend tax in Oman and in turn, in India.

e) Accordingly, SC dismissed the Department's appeal.

Our Comments

This decision reinforces the significance of tax-sparing clauses in the various DTAAs India has entered with multiple countries. Although the future of tax-sparing clause may not be entirely predictable due to the on-going discussions on BEPS and MLI in the international tax space, it is essential to acknowledge that the purpose of the tax-sparing clause is to promote economic growth and not promote double non-taxation.

2. ***Supreme Court[11]:*** *Has dismissed the department's SLP and affirms the decision of Delhi High Court[12] in the case of Air India Ltd. The judgement establishes that the provisions of section 206AA cannot override provisions of DTAA.*

Background

This case deals with the issue as to whether the absence of PAN of non-resident would allow the provisions of section 206AA to override the provisions of DTAA.

The Delhi High Court in the case of Danisco India Pvt. Ltd.[13] had ruled that the provisions of section 206AA cannot override the provisions of DTAA. The provisions

[11] CIT (International Taxation) vs Air India Ltd [2023] 456 ITR 139 (SC)
[12] - CIT Vs. Air India Ltd [2023] 456 ITR 117(Delhi)
[13] - Danisco India Pvt Ltd Vs. Union of India [2018] 404 ITR 539 (Delhi)

of section 206AA has to be read down to mean that where the deductee, i. e. the overseas resident business concern conducts its operation from a territory, whose Government has entered into a DTAA with India, the rate of taxation would be as dictated by the provisions of the treaty.

Subsequently, the Delhi High Court in the case of Air India had also re-affirmed this position.

Judgement of the Hon'ble Supreme Court

The Hon'ble Supreme Court has dismissed the SLP filed by the department to appeal the SC. Accordingly, the provisions of section 206AA cannot override the provisions of DTAA.

Our Comments

It is pertinent to note that the provisions of section 206AA has been amended by Finance Act, 2016 with effect from 1 June 2016. The amended section read with rule 37BC provides that in case of non-resident, the provisions of section 206AA will not be applicable if certain information is furnished by the non-resident.

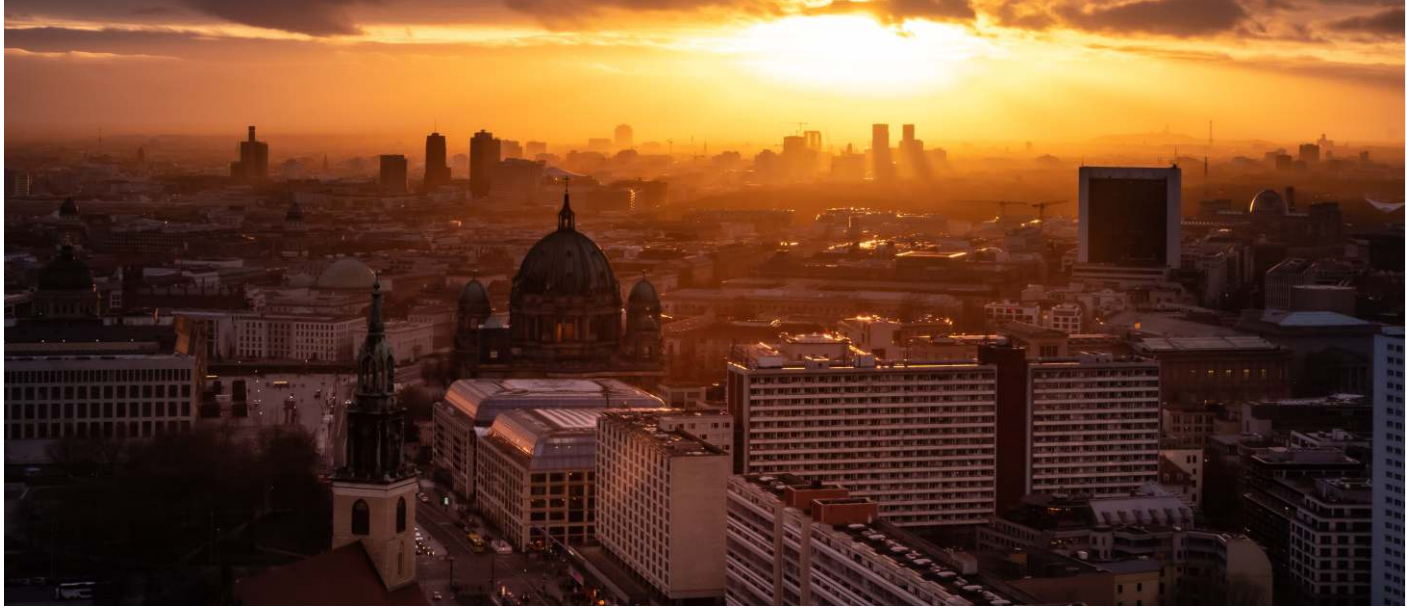
This decision would be helpful in the cases where the exclusions are not provided under the amended provisions of section 206AA read with Rule 37BC and provisions of DTAA shall prevail.

3. *Delhi ITAT[14]: Grants exemption under the India-Mauritius tax treaty to a Mauritius-based investment company on the disposal of equity shares that arose from the conversion of cumulative convertible preference shares (CCPS). The CCPS were issued prior to 1 April 2017 and the conversion happened after that date.*

Background

The Assessee is a company incorporated in Mauritius and a tax resident of Mauritius. In the course of its business activities, the Assessee invested in Indian companies by way of equity shares / CCPS. In the year under consideration (A.Y. 2019-20), the Assessee sold equity shares of two Indian companies and earned income under the head 'long-term capital gain' on sale of equity shares per se and on the disposal of equity shares that arose from the conversion of cumulative CCPS which were acquired prior to 1 April 2017.

[14] Sarva Capital LLC vs. ACIT [ITA No. 2289/Del/2022]



Capital gains from the transfer of shares of a company which is a resident of India by a resident of Mauritius were taxable only in Mauritius under Article 13(4) of the India-Mauritius tax treaty in respect of shares acquired prior to 1 April 2017. The tax treaty was amended in 2016 to tax the alienation of shares of a company which is a resident of India acquired on or after 1 April 2017.

The Assessee claimed the long-term capital gain as exempt in India under Article 13(4) of the India-Mauritius tax treaty.

The income-tax authorities denied treaty benefit to the Assessee on the basis that (1) the scheme of arrangement employed by the Assessee is a tax avoidance through a treaty shopping mechanism, (2) the Assessee is a conduit, and the beneficial owners of the capital gain income are residents of different countries (3) tax residency certificate (TRC) is not sufficient to establish the tax residency if the substance establishes otherwise (4) being a fiscally transparent entity having no liability to tax in Mauritius due to exemption in capital gain income under the domestic laws of Mauritius, cannot claim benefits of avoidance of double taxation.

Decision of the Hon'ble ITAT

a) Once the TRC has been issued by the competent authority of the other tax jurisdiction, it can be considered as a valid piece of evidence regarding tax residency status. This would make the Assessee eligible to avail the benefits under the India-Mauritius tax treaty.

b) Based on the interpretation of the expression "liable to taxation" in the case of Azadi Bachao Andolan, the Tribunal ruled that entities availing tax exemption under the domestic tax laws of Mauritius cannot be considered as not liable to taxation. It clarified that "liable to taxation" and "actual payment of tax" are two different aspects. Therefore, it cannot be concluded that the Assessee is not liable to tax under Article 4 of the India-Mauritius tax treaty.

c) The date of acquisition of equity shares, which come into existence due to the conversion of convertible preference shares, should be determined considering the date on which the preference shares were acquired and not on the date of conversion. The conversion merely changes the nature of the rights of the shares.

d) Hence, the capital gain derived by the Assessee on sale of equity shares is not taxable under Article 13 of India-Mauritius tax treaty.

C. Transfer Pricing

1. *Telangana High Court[15]: Holds that the draft assessment order accompanied by notice of demand and penalty notice would violate the mandate of section 144C and hence, would make the assessment proceedings bad in law.*

Background

The dispute in this case was that when the draft assessment order under section 144C was accompanied with notice of demand and penalty notice under section 271(1)(c) of the Act, whether it would reach to the conclusion that the draft assessment order is final assessment order and hence would violate the provision of section 144C and therefore, the order passed would be bad in law.

Judgement of the Hon'ble High Court

If the draft assessment order is accompanied by a notice of demand and penalty that itself would force one to reach to the conclusion that though it is termed as draft assessment order, in fact, it is the final assessment order as the notice of demand and penalty was accompanying the same and hence will violate the provisions of section 144C making the assessment bad in law.

Our Comments

This decision establishes an important principle - that the adherence to the provision of section 144C is crucial for the assessment proceedings. The judgement highlights that the procedure is not mere formality but rather a mandatory requirement. As a result, any non-adherence to the prescribed procedure would have serious consequences for the assessment proceedings.

[15] Hyundai Motor India Engineering Pvt Ktd vs PCIT [I.T.A No.29 of 2023]

2. *Bangalore ITAT[16]: Accepts foreign AE as tested party.*

Background

The Assessee is engaged in the business of pharmaceutical data analysis and pharmaceutical market research analysis. It has chosen its Foreign AEs as tested parties for benchmarking its foreign transactions with AEs. The Ld. CIT(A) did not allow the plea of foreign AE's as tested party.

Decision of Hon'ble ITAT

a) It is a settled principle in the transfer pricing provisions that the tested party should be the party in respect of which reliable data for comparison is easily and readily available. This view has been considered by Hon'ble Delhi Tribunal in case of Ranbaxy Laboratories Ltd. vs. ACIT[17].

b) If the Assessee's function and risks are more complex and numerous adjustments are to be made, in such a scenario foreign AE's can be considered as tested party.

3. *Mumbai ITAT[18]: Observes that the corporate guarantee to be reviewed regularly or at-least once in 3 years. Restrict corporate guarantee for all AE's to 0.60%.*

Background

a) The Assessee has provided Corporate Guarantee to its Associate Enterprises ('AE') in relation to various Bank loans/ facilities. It recovered 0.20% and 0.60% on different guarantees given to AEs' as Guarantee Commission ('GC').

b) The TPO rejected the Assessee's benchmarking rate and made the transfer pricing addition by charging 1.16% as GC on all guarantees given to AEs. Ld. DRP sustained the addition @ 1.16%. It was argued that in earlier years coordinate benches had restricted the guarantee commission in some cases to 0.60% and in some cases to 0.20%. Following the rule of consistency, the same may be sustained @ 0.60% and 0.20%, respectively depending upon the guarantee given.

Decision of Hon'ble ITAT

The ITAT observed that the corporate guarantee needs to be reviewed every year or at-least once in three years and sustained that the guarantee commission of 0.60% for all guarantees given.

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[16] IMS Health Analytics Services Pvt Ltd vs. CIT [TS-526-ITAT-2023(Bang)-TP]

[17] Ranbaxy Laboratories Ltd. vs. ACIT [110 ITD 428] [Del].

[18] KEC International Ltd vs.DCIT [TS-555-ITAT-2023(Mum)-TP]

D. CBDT Circulars and Notification

1. *CBDT issues FAQ's[19] for filling Form 10B and 10BB audit reports in case of trust registered under section 12AB and 10(23C) respectively.*

Form 10B & 10BB were notified[20] on 21st February 2023 and are applicable from A.Y 2023-24 onwards.

CBDT has now issued FAQ's regarding the same. The FAQ's provide helpful information on various aspects relating to filling of Form 10B & 10BB including clarification and guidance on the following aspects:

- who is an auditee
- time limit for filling for Form10B and Form 10BB
- meaning of foreign contribution
- modes of verification
- documents to be attached along with them
- filling procedure etc

2. *CBDT[21] has notified the transfer of the following capital assets not to be regarded as transfer under section 47:*

- unit of investment trust
- unit of a scheme
- unit of a Exchange Traded Fund launched under International Financial Services Centres Authority (Fund Management) Regulations, 2022.

[19] FAQ added as on 05.09.2023

[20] Notification No.07/2023 dated 21.02.2023

[21] Notification No. 71/2023, F. No. 225/103/2023-ITA-II dated 12.09.2023

Further the notification clarifies the meaning of the term "Investment Trust" and "Scheme" as follows:

"Investment Trust" shall have the meaning assigned to it in clause (d) of sub-regulation (1) of regulation 83 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

"Scheme" shall have the meaning assigned to it in clause (ii) of sub-regulation (1) of regulation 2 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

3. CBDT[22] extends the due date for furnishing audit reports in Form 10B/Form 10BB for A.Y. 2023-24 to October 31, 2023, from the earlier due date of September 30, 2023. Additionally, the due date for furnishing ITR-7 for A.Y 2023-24 has also been extended to November 30, 2023, from the earlier due date of October 31, 2023.

The circulars read as follows:

"On consideration of difficulties reported by the taxpayers and other stakeholders, the Central Board of Direct Taxes (CBDT), in exercise of its powers under section 119 of the Income-tax Act, 1961 (Act), provides relaxation in respect of following compliances:

a. The due date of furnishing Audit report under clause (b) of the tenth proviso to clause (23C) of section 10 and sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Income-tax Act, 1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution in Form 10B/Form 10BB for the Previous Year 2022-23, which is 30th September, 2023, is hereby extended to 31st October, 2023.

b. The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assessee referred to in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, which is 31st October, 2023, is hereby extended to 30th November, 2023."

[22] Circular No. 16/2023 in 225/177/2023/ITA-II dated 18.09.2023

4. CBDT[23] notifies valuation method and guidelines for the purpose of section 56(2) (viib).

Section 56(2)(viib) states that if a closely held company receives any consideration for the issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value is chargeable to tax under section 56(2)(viib) of the Act. To determine the fair market value of the shares, CBDT has prescribed rule 11UA.

Section 56(2)(viib) was amended by Finance Act 2023 with effect from A.Y. 2023-24 to include issue of shares to a non-resident. Recognising the concern raised regarding valuation of shares after amendment of section 56(2)(viib) by Finance Act 2023, the CBDT has notified amended rule 11UA with effect from 25th September 2023.

The importance features of the amended rule are as under:

- The amended rules now provide five more methods to valuation of issue of unquoted shares including the following:
  - i) Comparable Company Multiple Method
  - ii) Probability Weighted Expected Return Method
  - iii) Option Pricing Method
  - iv) Milestone Analysis Method
  - v) Replacement Cost Methods
- The notification has also added in rule 11UA as a separate sub clause for valuation of CCPS.
- Earlier, rule 11UA required valuation to be done on the date of the issue of shares. The amended rule 11UA provides that valuation report up to 90 days prior to date of issue of shares can be accepted.
- Furthermore, a safe harbour limit of 10% of variation in value has been prescribed.

For further details refer part IV.

[23] Notification No. 81 /2023/F. No. 370142/9/2023-TPL Part (1) dated 25.09.2023

5. CBDT[24] issues guidelines for submitting an application for Nil or lower TDS through TRACES.

The guidelines clarify the process for e-filing Form 13 which can be done using digital signature, electronic verification mode, aadhar based authentication or mobile OTP.

The guidelines describes how the application will be processed and the roles of the AO, Range Head, and CIT. It clarifies once the administrative approval is granted, the AO will generate a certificate on TRACES-AO Portal, and the applicant will be responsible for sharing it with the respective deductor.

It also clarifies that the certificate will be consumed on FIFO basis and advises a consumption status be verified before deducting and filling TDS returns.

6. CBDT[25] notifies Form 6D for inventory valuation report under section 142(2A).

Section 142(2A) has been amended by Finance Act, 2023 to empower the Assessing Officer to direct the valuation of inventory. Consequentially, section 295 of the Act was also amended to include the power to make rules to prescribe the form of inventory of valuation report and the particulars which such report shall contain.

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[24] Notification No.02/2023 dated 27.09.2023

[25] Notification No. 82/2023/F.No. 370142/29/2023-TPL dated

In pursuance thereof, the CBDT has amended Rule 14A of the Rules prescribing Form 6D for Inventory Valuation report under clause (ii) of section 142(2A) of the Income-tax Act, 1961. Further, Rule 14B has been amended prescribing guidelines for the purposes of determining expenses for audit of inventory valuation.

7. CBDT[26] notifies Form 10-IFA under section 115BAE for new manufacturing co-operative societies.

The Taxation Laws (Amendment) Act, 2019, inter-alia, inserted section 115BAB in the Act which provides that new manufacturing domestic companies set up on or after 01.10.2019, which commence manufacturing or production by 31.03.2023 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15 per cent. The time for commencing manufacturing or production has been extended to 31.03.2024 by the Finance Act, 2022. However, the same provision has not been provided for new manufacturing co-operative societies.

Hence to provide a level playing field between new manufacturing co-operative societies and manufacturing companies section 115BAE was inserted by Finance Act, 2023.

The eligible co-operative society has to exercise the option in the prescribed manner on or before the due date for furnishing the first return of income for any previous year relevant to A.Y. commencing on or after 01st April 2024.

In pursuance thereof, CBDT has now notified rule 21AHA and Form 10-IFA to avail the benefit under section 115BAE of the Act.

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[26] Notification No. 83/2023/ F. No.370142/32/2023-TPL dated 29.09.2023

II. Goods and Services Tax

1. **Thirty-one GST appellate tribunal benches to be set up across country.**

   The Centre has issued notification vide no.SO.4073 (E) dated. September 14,2023 for setting up of 31 GST appellate tribunal benches across the country to ensure quick resolution of disputes related to Goods and Services Tax (GST) between the government and businesses, and central and state governments. This move will help reduce burden on high courts. It is expected that the tribunals to be functional in five to six months.

2. **Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by specific unregistered persons.**

   With effect from the 1st day of October, 2023, the persons making supply of goods through an electronic commerce operator who is required to collect tax at source(TCS) under section 52 of the said Act and having his aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered under the Act is exempted from obtaining registration subject to fulfillment of certain conditions.

3. **Foreign OIDAR firms providing services to unregistered persons must register, pay GST in India from October 1.**

Effective October 1, foreign companies providing online services such as advertising, cloud services, music, and information to non-GST-registered individuals in the country will have to pay goods and services tax. Consequently, the foreign company must register in India for GST purposes. The move follows post amendment of revise the definition of "non-taxable online recipient" to broaden the scope of Online Information and Database Access or Retrieval Services (OIDAR). A non-taxable online recipient would include any unregistered person receiving OIDAR services, regardless of the purpose, and located in India's taxable territory.

4. **Whether benefit of Input tax credit ('ITC') can be given to the recipient even if said ITC not reflected in GSTR-2A?**

The Hon'ble Kerla High Court in M/s. Diya Agencies v. State of Kerala WP (C) 29769 of 2023 dated September 12, 2023] held merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.

III. Audit and Assurance

1. Audit Trail Requirement and way forward.

The Companies Act, 2013, mandates that **every company**, irrespective of its size or structure, maintain an audit trail of its financial transactions and operations. i.e effective from **01 April 2023**. As per Rule 3 of the Companies (Accounts) Rules, 2014 It is the prime responsibility of the management to use such accounting software which has following features:

- **Records** an audit trail of each and every transaction.
- Creating an **edit log** of each change made in books of accounts along with the date when such changes were made.
- Ensuring that audit trail is not disabled and who has the right to make any change to it.

Authorities can ask for books of accounts from the Company at any time. Since Audit trail is part of books of accounts it can be asked by them as well. Books of accounts are to be maintained for a minimum period of eight years and the audit trail data/log has to be maintained for that period and should be retrievable.

Non-Compliance would attract a penalty of minimum fifty thousand to maximum five lakh rupees on the Company.

Auditors play a pivotal role in ensuring compliance with the audit trail requirements under the Companies Act, 2013. It is the responsibility of the auditor to:

1. Examine the Audit Trail
2. Report Non-Compliance

In conclusion, the audit trail requirement under the Companies Act, 2013, is a critical aspect of corporate governance and transparency in India. Non-compliance can lead to significant penalties for both companies and their officers, making it imperative for businesses to maintain accurate and transparent financial records. Auditors, as watchdogs of financial integrity, play a vital role in upholding these standards and reporting any lapses in compliance, contributing to the overall health and trustworthiness of the corporate sector.

How can we help: Our cyber team can perform Audit log assessment and evaluation of your systems to identify and plug gaps if any.

2. Expert Advisory Committee Opinion: Capital or Revenue Expenditure on Repairs to Plant and Machinery.

Facts of the case: A company has a washery plant with four major sections. The useful life of the plant has expired and the efficiency of the plant has depleted. The company estimated that incurring a cost of Rs 56.19 crore on design, engineering, civil and development work, electrical works and replacing certain parts will restore the plant efficiency and it will operate for another four years. The Company treated this expense in the nature of revenue and did not capitalize the same. The Company stated the fact that the expenditure cannot be allocated to a specific component of the plant and as such the expenditure is not related to the PPE as a whole. Hence, the reliable estimation of the enhancement of the life of PPE or an item of PPE could not be technically established. Also, the replacement activities are related to a particular section of PPE hence, the probability of future economic benefits associated with the asset as a whole could not be established. It was also assumed that the Company does not follow component accounting. Since none of the items executed would have a separate useful life than that of the asset a whole.

Query

1) Whether the accounting treatment extended by the Company for replacement activities and restoration activities of selected structural, civil and other support system with an aim to improve the operational efficiency and reduction in maintenance/breakdown hours after the useful life of the plant is as per the applicable provisions of IND AS 16. i.e (the said expenses to be charged to Profit and Loss as and when incurred).

2) If not, then how the said expenditure is to be accounted for and what should be the basis for determination of useful life in the given case for provision for depreciation?

Opinion: The Committee is of the following opinion on the query raised above:

The accounting treatment extended by the Company for replacement activities and restoration of selected structural, civil and other support system with an aim to improve the operational efficiency and reduction in maintenance / breakdown hours after the useful life of the washery will not be appropriate as per the requirements of Ind AS 16 'Property, Plant and Equipment', if such expenditure, in aggregate, can be considered to be 'material', as per the requirements of Ind AS 1 in the context of plant as a whole. The Committee is of the view that determination of what is 'material' involves significant judgement considering the nature and size of the information, assessed not only individually, but also in combination with other information and which could reasonably be expected to influence decisions of primary users of general purpose financial statements. If the expenditure incurred is material, since it will lead to future economic benefits in terms of improvement in operations and capacity of the plant and the cost incurred can be reliably measured, the recognition criteria under paragraph 7 of Ind AS 16 are met; and hence, the Company should capitalize such expenditure as cost of the plant. With regard to basis of determination of useful life, an estimation of life should be made by the Company considering various factors as mentioned in paragraphs 56 and 57 of Ind AS 16 including technical evaluation, past experience, defect liability period, etc. Further, such useful life should be reviewed regularly as per the requirements of paragraph 51 of Ind AS 16. Reference may also be made to the requirements of Schedule II to the Companies Act, 2013 in this regard.

Note: The opinion is only that of the Expert Advisory Committee and does not necessarily represent the opinion of the Council of the Institute or BSC explicitly.

IV. Amendment in Rule 11UA of Income Tax Rules,1962

Amendment to Valuation rules notified by CBDT for equity and compulsorily convertible preference shares for angel tax.

Background

Section 56(2)(viib) of the Income Tax Act, 1961 ("the Act") governs taxation of share premium in excess of the fair market value for residents. The said section was amended under The Finance Act, 2023, with effect from April 1, 2023 to cover even Non-residents under the ambit of the aforesaid section to widen the tax base as well as to eliminate the possibility of tax avoidance by extending the applicability to any person irrespective of residential status.

However, there were various concerns pertaining to undue hardship faced by Non-resident Investors as there was still ambiguity with regards to the valuation of securities (unquoted equity shares and compulsorily convertible preference shares) as per Rule 11UA of the Income Tax Rules, 1962 ("the Rules"). Accordingly, CBDT proposed amendments to Rule 11UA of the Rules via notification dated May 19, 2023 and had requested all stakeholders and the general public to provide suggestions and comments thereon.

Post public consultations, CBDT issued notification dated September 25, 2023 to amend valuation rules under Rule 11UA relevant for angel tax provisions.

Synopsis of the amendment notified by CBDT

1. It now provides separate valuation mechanism for Compulsorily Convertible Preference Shareholders (CCPS), along with providing an option to adopt FMV of unquoted equity shares for determining FMV of CCPS.
2. It now provides for five more methods of valuation for issue of unquoted equity shares and CCPS to Non-Resident Investors.
3. It now provides for a safe harbor of 10% variation in value of unquoted equity shares and CCPS.
4. New clauses introduced to facilitate price matching option for residents and non-residents basis the FMV of unquoted equity shares and CCPS issued to certain categories of investors.
5. It now allows a 90 days window period for issuance of valuation report by merchant banker prior to date of issue of unquoted equity shares / CCPS.

New Valuation Rules (Amended Rules)

1. **Introduction of new methods for computation of FMV**

   Erstwhile Rule 11UA, inter alia provided 2 methods for computation of FMV of unquoted equity shares namely,

   1) Net Asset Value ("NAV")

   2) Discounted Cash Flow ("DCF")

   Earlier, only residents were included in the purview of section 56(2)(viib) of the IT Act, 1961 and hence Rule 11UA only had 2 acceptable valuation methods. Whereas, with the amendment of The Finance Act, 2023, even Non-residents were included under the purview of this section and hence in the recent CBDT notification five more methods to derive FMV of unquoted equity shares/ CCPS by merchant banker, for non-resident investors are provided.

   Below are the new introduced valuation methods **for non-resident Investors** in addition to earlier methods:

   a) Comparable Company multiple method
   b) Probability weighted expected return method
   c) Option Pricing Method
   d) Milestone Analysis Method
   e) Replacement Cost Method

2. Valuation mechanism for CCPS

Erstwhile, there was no separate valuation mechanism for CCPS, the recent amendment has now introduced a separate valuation mechanism for CCPS vide Rule 11UA(2)(B) to bring more transparency and clarity, specially considering increasing use of CCPS as an instrument in recent times.

CCPS Valuation Mechanism provides independent valuation methodologies for CCPS as instrument both for Residents as well as Non-Residents. It further also provides an option to adopt FMV of unquoted equity shares in certain cases as valuation for CCPS.

The Various Methodologies available for valuation of Unquoted Equity Shares as well as CCPS have been summarized as under:

Valuation Method	Application	Class of Shares
NAV	Resident & Non-Resident	Unquoted Equity Shares
DCF	Resident & Non-Resident	Unquoted Equity Shares and CCPS
Other 5 methods	Non-residents only	Unquoted Equity Shares and CCPS

3. Safe Harbor rule

Prior to amendment, Rule 11UA did not provide for any Safe Harbor valuation tolerance limit. However, the current amendment has introduced Safe Harbor Rule which shall be applicable to both residents and non-residents investors.

As per the safe harbour rule, price variation up to 10% from the FMV of equity shares on account of factors like foreign currency exchange rate fluctuations, bidding procedures, and changes in other economic markers, & other factors that could impact the valuation of unlisted equity shares during various investment rounds.

The safe harbor of 10% is applicable only in case of NAV, DCF and five new valuation methods. It is not extended to situations covered under price matching facility for shares issued to VCF/ specified funds or notified entities.

4. **New clauses introduced to the rule in the amendment – Price matching facility for residents and non-residents.**

   New clauses (c) and (e) are inserted under sub-rule (2)(A) of Rule 11UA whereby the company, for any issue of its unquoted equity shares, can opt to consider the FMV of equity shares of the company to be equal to the price at which equity shares are issued to a venture capital fund/company/specified fund or to the specified investors.

The aforesaid benchmarking of the FMV of equity shares is subject to compliance with certain conditions viz.:

I. Investment in venture capital undertaking:

- **FMV -** the price at which equity shares issued to a venture capital fund/company/specified fund.
- **Maximum investment -** total consideration received from a venture capital fund/company/specified fund.
- **Investment by a venture capital fund/company/ specified fund -** Within 90 days before or after the date of issue of shares which are the subject matter of valuation.

ii. Investment in other companies:

- **FMV -** the price at which equity shares are issued to specified investors.
- **Maximum investment -** total consideration received from specified investors.
- **Investment by specified investors -** within 90 days before or after the date of issue of shares which are the subject matter of valuation.

5. **90 days window period for merchant banker valuation**

   Prior to amendment Rule 11UA required merchant banker valuation report as on the date of issue of shares. However as per the amendment, valuation report issued 90 days prior to issue of equity shares shall be allowed for the purpose of computing the FMV of unquoted equity shares/CCPS.

1. Annexure A: Valuation Rules

Relevant Rule	Relevant Provisions
11UA(2)(A)(a) – Option available to the assessee at the time of issue to resident and non-resident investors.	The recommended approach for valuation is to utilize the book value method, as outlined by the following formula: (A-L) X [PV / PE]; where; A = book value of assets excluding tax payments, tax refunds claimed, unamortized deferred expenses, or any other amount that does not represent any value; L = book value of liabilities excluding equity paid-up capital, reserved funds for pending dividend declarations, negative balances of reserves and surplus (other than depreciation reserves), provision for taxes, provisions for unascertained liabilities, etc. PE = total amount of paid-up equity share capital as shown in the balance-sheet; and PV = the paid-up value of such equity shares. • There is no change in this sub-rule as compared to the existing rule.
11UA(2)(A)(b) – Option available at the time of issue to resident and non-resident investors	• FMV shall be determined by a Merchant Banker using Discounted Free Cash Flow method. • There is no change in this sub-rule as compared to the existing rule.
11UA(2)(A)© – Option available at the time of issue to resident and non-resident investors	This sub-rule is newly introduced, wherein a Venture Capital ('VC') undertaking has issued shares to a VC Fund, VC Company, or a specified fund, the VC undertaking has the option to use the FMV of such shares subject to the following two conditions: • Amount received does not exceed the aggregate investment received at the time it is issued to such VC Fund, VC Company, or a specified fund; and • Shares are issued within 90 days before or after the date of receipt of consideration from the VC Fund, VC Company, or a specified fund.
11UA(2)(A)(d) – Option available at the time of issue only to non-resident investors.	• Under this new sub-rule, FMV shall be determined by a Merchant Banker using any of the following methods: • Comparable Company Multiple Method • Probability Weighted Expected Return Method • Option Pricing Method • Milestone Analysis Method • Replacement Cost Methods
11UA(2)(A)(e) – Option available at the time of issue to resident and non-resident investors.	Provisions as stated above under Rule 11UA(2)(A)(c) for VC undertaking are also available to persons or class of persons notified under clause (ii) of first proviso to section 56(2)(viib) of the IT Act, which the CBDT notified vide notification no. 29/2023 dated May 24, 2023.

2. Methodologies for CCPS

Moreover, in accordance with **Rule 11UA(2)(B)** pertaining to the **valuation of CCPS**, the FMV will be determined as tabulated hereunder:

Relevant Rule	Relevant Provisions
11UA(2)(B)(I) – **Resident Investor**	• Option to value CCPS as per rule 11UA(2)(A)(b) / (c) / (e); or • Option to value CCPS based on the FMV of unquoted equity shares determined in accordance with rule 11UA(2)(A)(a) / (b) / (c) / (e).
11UA(2)(B)(ii) – **Non-resident Investor**	• Option to value CCPS as per rule 11UA(2)(A)(b) to (e); or • Option to value CCPS based on the FMV of unquoted equity shares derived in accordance with rule 11UA(2)(A)(a) to (e).

Annexure B:

Following are excluded from the ambit of section 56(2)(viib):

1. Government and government related investors or agencies including entities controlled by the Government.
2. Banks or entities involved in the insurance business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident.
3. Any entity which is a resident of any country or territory out of the specified list of 21 countries and such entity is subject to applicable regulations in the country where it is incorporated or established or is a resident:
   - Securities and Exchange Board of India (SEBI) registered Category-I foreign portfolio investors.
   - Endowment funds associated with a university, hospitals or charities.
   - Pension funds created or established under the law of the foreign country or specified territory.

Broad-based pooled investment vehicles or funds with more than 50 investors (not being a hedge fund or fund which employs diverse or complex trading strategies).

V. Compliance Calendar Oct. 23

A. Income Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	7th Oct	September 2023	TDS / TCS Payment	Non-Government Deductors
2.	15th Oct	Qtr. 2. (F.Y. 23-24) (July to Sept.)	TCS Return	All deductors
3.	15th Oct	Qtr. 2. (F.Y. 23-24) (July to Sept.)	Form 15G/Form15H	No Deduction of TDS
4.	31st Oct	Qtr. 2 (F.Y 23-24) (July to Sept.)	TDS Return	All Assessee
5.	31st Oct	FY 2022-23	Filing of Tax Audit Report	Assesses covered under Transfer Pricing
6.	31st Oct	FY 2022-23	TP intimation Form 3CEAB FY 2022-23	Assesses covered under Transfer Pricing
7.	31st Oct	FY 2022-23	Report to be furnished in Form 3CEB	Assesses covered under Transfer Pricing
8.	31st Oct	FY 2022-23	ITR due date for corporate and tax audit taxpayers	For All taxpayers to whom tax audit is applicable (non TP cases)

B. Goods and Service Tax

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

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
				b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
4.	13th Oct.	Qtr. 2 F.Y. 2023-24 (Jul to Sept)	GSTR – 1 - QRMP	All those tax payers opted for Quarterly Return Monthly Payment Scheme
5.	13th Oct.	Sept. 23	GSTR – 6 (ISD)	Person registered as ISD
6.	18th Oct.	Qtr. 2 F.Y. 2023-24 (Jul to Sept)	CMP-08	Person Registered under Composition Scheme
7.	13th Sept.	Sept. 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
8.	20th Sept.	Sept. 23	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
9.	25th Sept.	Sept. 23	GSTR - 5A (OIDAR)	OIDAR services provider
10.		Qtr. 2 F.Y. 2023-24 (Jul to Sept)	GSTR – 3B - QRMP (for April - June 23) (D)*	Aggregate Turnover is up to Rs. 5 crores
11.		Qtr. 2 F.Y. 2023-24 (Jul to Sept)	GSTR – 3B - QRMP (for April - June 23) (E)**	Aggregate Turnover is up to Rs. 5 crores
12.		F.Y. 2023-24 (April to Sept)	GST – ITC 04	Half yearly return for good sent for Jobwork

*D - 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.

**E - 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
1.	7th Oct.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders

D. Ministry of Corporate Affairs (MCA) Compliance

Sr No.	Due Dates	Particulars	Applicable to
1.	30th Oct.	Filing of Form AOC-4- Annual account	For all Companies
2.	30th Oct.	Form MSME 1 (April-22-Sept 22) (Half yearly Return)	Companies cover under MSME

BHUTA SHAH & CO LLP
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About us

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