

BHUTA
SHAH
& CO
LLP

CHARTERED
ACCOUNTANTS



BSC BEACON

Tax & Regulatory Insights

JUNE 2023



Table of Contents

Glossary	01
I. Direct Tax:	02
A. Corporate Tax:	02
1. HC: Re-assessment proceedings initiated by issuing notice under section 148A(d) read with section 148, in the name of a non-existent Company which had merged with another Company, is a substantive illegality and without jurisdiction	02
2. HC: While deciding stay applications it is mandatory to examine the trinity of- (i) existence of prima facie case, (ii) balance of convenience and (iii) financial stringency	03
3. HC: Stay can be granted to the Assessee on deposit of 10% of Disputed Demand considering the Financial Hardship of the Assessee	04
4. ITAT: Payments made to Contract Teachers with whom Colleges entered into an Agreement for teaching work do not fall within definition of 'Fees for Professional Services' under section 194J and such payments are thus not liable to TDS under section 194J	05
B. International Tax	06
1. ITAT Delhi: Tax Residency Certificate (TRC) is statutorily the only evidence required to be eligible for the benefit under the DTAA – Tax Authorities cannot go behind the TRC and question the TRC	06
2. ITAT Delhi: Presumptive taxation scheme of section 44BB will NOT apply in absence of Permanent Establishment of Non-Resident in India	06
3. ITAT Mumbai: When control of the ship throughout remained with the assessee and did not get transferred to the charterer, the consideration received by the assessee for chartering of ship cannot be taxed as Royalty since “use” or “right to use” was not passed on to the charterer	07
C. Transfer Pricing	08
1. HC: Mere usage of foreign name of the Associated Enterprise (AE) by the Assessee does not make it an International Transaction; selling expenses do not constitute part of Advertisement, Marketing and Promotion (AMP) expenditure	08

2. HC: The AO can make reference to the TPO for determination of Arm's Length Price only after selecting the case for scrutiny assessment, and so the AO cannot rely upon the TPO's order, passed in a reference by the AO without selecting the case for scrutiny assessment, to reopen the assessment	09
3. ITAT Mumbai: Other Method, not CUP, is the Most Appropriate Method (MAM) for determining Arm's Length Price of Bundle of Sports Broadcasting Rights purchased by the Assessee from its AE; In appeal the Assessee can argue for change of Most Appropriate Method applied in the Transfer Pricing Study Report (TPSR)	10
4. ITAT Delhi: For benchmarking international transactions relating to merchanting trades segment under TNMM 'Berry Ratio', not Operating Profit/Operating Cost (OP/OC), is the appropriate Profit Level Indicator (PLI)	10
D. CBDT: Notifications/Circulars issued by CBDT	12
1. Communication of timelines for providing response under section 245(1) and intimating step by step procedure to be followed by the assesses for providing response to intimation u/s 245(1) issued by Centralised Processing Centre, Bengaluru	12
2. CBDT has notified '348' as the Cost Inflation Index (CII) for Financial Year 2023-24 and subsequent years	13
3. Condonation of delay in filing refund claim and claim of carry forward of losses under Section 119(2)(b)	13
4. CBDT extends time limit for submission of Quarter 1 (2023-24) TDS and TCS Statements from 31.07.2023 to 30.09.23	13
5. Government gives more time for implementation of revised TCS rates for purposes of LRS ('Liberalised Remittance Scheme') and for inclusion of credit card payments in LRS	14
II. Benami Property Act	15
1. HC: Burden of proving that a particular transaction is benami, and the apparent purchaser is not the real owner, always rests on the person asserting it to be so	15
III. Company Law	16
1. MCA: Ministry of Corporate Affairs (MCA) grants extension for filing Form DPT-3	16
IV. Securities and Exchange Board of India (SEBI) Regulations	17
1. SEBI issues Master Circular: Much needed clarity on the Scheme of Arrangement by Listed Companies	17
2. SEBI Notifies Amendments to the Listing Regulations: ensures timely and accurate disclosure on all the material matters as well as strengthens compliance for listed companies	17
V. Accounting Standards	19
1. Ministry of Corporate Affairs amends the Companies (Indian Accounting Standards) Rules, 2015: In Ind As 8 there is change in the definition of accounting estimate	19
VI. Compliance Calendar for the month of July 2023	20

Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
AE	Associated Enterprise
AO	Assessing officer
AY	Assessment Year
AMP	Advertisement, Marketing and Promotion Expenses
ALP	Arm's Length Price
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income-tax
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CII	Cost Inflation Index
CUP	Comparable Uncontrolled Transaction
DTAA	Double taxation avoidance agreement
DRP	Dispute Resolution Panel
HC	High Court
Hon	Hon'ble
ITAT	Income Tax Appellate Tribunal
MCA	Ministry of Corporate Affairs
NCLT	National Company Law Tribunal
NBFC	Non-Banking Financial Company
PE	Permanent Establishment
PY	Previous Year
PLI	Profit Level Indicator
PCIT	Principal Commissioner of Income Tax
SC	Supreme Court
SEBI	Securities Exchange Board of India
TDS	Tax Deducted at Source
The act	Income-tax Act, 1961
TRC	Tax Residency Certificate
TPO	Transfer Pricing Officer



Direct Taxes

A. Corporate Taxes

1. *Karnataka High Court in Coffee Day Resorts (MSM) Pvt Ltd¹: Re-assessment proceedings initiated by issuing notice under section 148A(d) read with section 148, in the name of a non-existent Company which had merged with another Company, is a substantive illegality and without jurisdiction*

Facts

- i. Shankar Resources Private Ltd, was Non-Banking Financial Company (NBFC) which had merged into the Coffee Day Resorts (MSM) Pvt Ltd by an order of amalgamation dated 18.06.2019 of National Company Law Tribunal (NCLT).
- ii. The Assessing Officer issued a notice under Section 148A (b) of the Act on 28.01.2023 calling upon Shankar Resources Private Limited to show-cause as to why a notice under Section 148 of the Act should not be issued for AY 2019-20.
- iii. Coffee Day Resorts (MSM) Pvt Ltd (the surviving entity after merger) made out reply on 04.02.2023 specifically stating that the company (Shankar Resources Private Ltd) to which notice under Section 148A (b) came to be issued has amalgamated with Coffee Day Resorts (MSM) Pvt Ltd, with effect from 01.04.2018. Accordingly, it was contended that Shankar Resources Private Ltd, ceased to exist from 01.04.2018 and there was no assessable entity by name Shankar Resources Private Ltd, for the AY 2019-20.
- iv. The Assessing Office, however, disregarded the response of the surviving company) and passed an order under section 148A (d) of the Act and issued a

- v. notice under section 148 of the Act in name of Shankar Resources Private Limited for AY 2019-20.
- v. Coffee Day Resorts (MSM) Pvt Ltd challenged in a writ petition before the Hon. Karnataka High Court the show cause notice under Section 148A(b) issued in the name of the non-existent entity, order under Section 148A(d) passed pursuant to such show cause notice and the notice under Section 148.

Judgement of Hon. Karnataka High Court

- It is a matter of record that as on the date (28.03.2023) of issue of notice under Section 148A (b), the entity (Shankar Resources Private Ltd) to which notice was issued was not in existence having merged with Coffee Day Resorts (MSM) Pvt Ltd.
- Even otherwise, it must be noted that consequent to merger, the transactions relating to erstwhile company Shankar Resources Private Ltd, find mention in the books of Coffee Day Resorts (MSM) Pvt Ltd.
- In light of the judgment of the Apex Court in the case of **PCIT v. Maruti Suzuki India Ltd²**, it is clear that notice and assessment order passed in the name of non-existing company is a substantive illegality and is an order passed without jurisdiction.

¹ Coffee Day Resorts (MSM) Pvt Ltd [TS-320-HC-2023(KAR)]

² PCIT v. Maruti Suzuki India Ltd reported in (2019) 107 taxmann.com 375 (SC)

- So, notice under Section 148A (b) as also order under Section 148A (d) and notice under Section 148 are set aside.
- Needless to state that the authorities are at liberty to initiate appropriate proceedings as is open in law and

permissible insofar as contents of the notice under Section 148A (b) as against Coffee Day Resorts (MSM) Pvt Ltd (the surviving entity after merger) in accordance with law.

2. High Court of Jharkhand in Nirmal Kumar Pradeep Kumar (HUF)³: While deciding stay applications it is mandatory to examine the trinity of: (i) existence of prima facie case, (ii) balance of convenience and (iii) financial stringency

The Assessee-HUF was engaged in mining business and claimed expenditure of Rs.202 Cr under Section 37(1) towards compensation paid for damaging environment pursuant to Supreme Court's directions. Such expenditure was disallowed by the Assessing Officer.

The Assessee filed appeal before CIT(A) and during the pendency of appeal, filed application before AO seeking stay of demand under Section 220(6) of the Act, which was rejected. Thereafter, Assessee preferred a review of stay application before PCIT who granted partial relief by directing the Assessee to deposit Rs.5.10 Cr till the disposal of appeal.

The order of PCIT was challenged by the Assessee in a writ petition before the Hon. High Court of Jharkhand.

Judgement of Hon. High Court of Jharkhand

- i. A plain reading of Section 220 of the Act clearly stipulates that once the final assessment order is passed by determining the tax liability, then failure to pay the tax within the specified time would attract Section 220(1) and the Assessee would be deemed to be assessee-in-default which cannot be stayed by mere filing of an appeal before CIT(A).
- ii. The power under section 220(6)⁴ is discretionary which is coupled with a duty to be exercised judiciously and reasonably based on relevant grounds and facts. However, in the present case, the AO has not considered anything and mechanically declined to grant stay by placing reliance upon CBDT Office Memorandum Dated 31.07. 2017. This is contrary to law.
- iii. A holder of public office, when exercising discretion conferred by statute, must ensure that such exercise is in furtherance of accomplishment for the purpose



underlying conferment of such power.

- iv. The Hon. Delhi HC in the case of '**L.G. Electronics India Pvt Ltd v. PCIT and Ors, being W.P.(C) No. 6778 of 2017**' (subsequently affirmed by SC) held that the administrative Circular would not operate as a fetter upon the AO who is quasi-judicial authority to grant stay and it is open to the authorities on the facts of the individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.
- v. The order of PCIT does not reveal any application of mind while deciding the application for stay of the Assessee and there was no discussion whatsoever on the **prima facie case, balance of convenience and undue hardships**, including the fact as to whether the Assessee has come with clean hands.
- vi. Accordingly, the Hon. High Court of Jharkhand set aside the orders of the AO as well as the PCIT and remitted the matter back to the AO with a direction to pass a fresh order on the application for stay of demand of the Assessee, after granting opportunity of being heard.
- vii. The Hon. High Court also directed the CIT(A) to dispose of the appeal within 6 months.

³ Nirmal Kumar Pradeep Kumar (HUF) [TS-294-HC-2023(JHAR)]

⁴ Section 220(6) of the Act provides that, where an assessee has presented an appeal under section 246 before Commissioner of Income Tax (Appeal) or section 246A before Income Tax Appellate Tribunal, the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed off.

Our Comments:

The stay petition under section 220(6) should be prepared by covering the following points:

- The petition should state the prima facie merits of the case in appeal
- The financial position of the Assessee and the hardship that would be suffered by the Assessee due to the recovery of the disputed demand should be clearly and precisely brought out.
- The petition should state why and how the balance of convenience is in favour of the stay, e.g., damaging effect on the liquidity position of the business. etc.

3. High Court of Bombay in Goa Forest Development Corporation⁵: Stay can be granted to the Assessee on deposit of 10% of Disputed Demand considering the Financial Hardship of the Assessee.

The assessee company was a 100% State Government owned company. The assessee received a notice under section 148 of the Act, and in response the assessee filed its return of income declaring loss.

The AO made an assessment under section 147 read with Section 144B and issued demand notice of 7.81 Crores under section 156.

The AO considered bank fixed deposits as unexplained income despite the fact that investments in fixed deposits were made out of the grants received from the Government of Goa. Similarly, the purchase price of the vehicles purchased was also considered as unexplained expenditure.

The assessee filed an application for stay of demand which was rejected by the Assessing Officer on the ground that assessee failed to pay 20% of disputed demand. On further appeals, CIT(A) upheld the stand taken by AO and did not grant an order of stay without the assessee paying 20% of disputed demand.

Aggrieved by the orders of the AO and CIT(A), assessee filed a petition before the Hon. High Court.

Judgement of Hon. Bombay High Court

- i. Financial stringency of the assessee was not at all considered in the perspective it ought to have been considered by the Revenue Authorities.
- ii. Rejection of stay application without giving any reason clearly exhibit non-application of mind by the AO. The concerned authority must apply the principles of natural justice by giving the reasons for rejecting stay applications.
- iii. For considering the stay application, in **KEC International Ltd⁶**, the following guidelines have been

laid down:

- a. While determining stay of demand as laid down in the similar case of While considering the stay application, the authority concerned should at least briefly set out the case of the assessee.
 - b. In cases where the assessed income far exceeds the returned income, the authority will consider whether the assessee has made out a case of unconditional stay.
 - c. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.
 - d. In cases where the assessee relies upon financial difficulties, the authority concerned should briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.
 - e. The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.
- iv. The Hon. High Court directed the CIT(A) to hear the assessee's appeal on merit on the condition that the petitioner shall deposit an amount of Rs. 30 lacs within a period of 2 weeks from the date of Hon. High

⁵ Goa Forest Development Corporation v. PCIT [2023] 150 taxmann.com 309 (Bombay)

⁶ KEC International Ltd v. B.R. Balakrishnan [2001] 119 Taxman 974/251 ITR 158 (Bombay)

Court's order and the balance (to make up 10% of the demanded amount) within further two weeks from the date of first deposit.

Court's order, the assessee was directed to deposit 10% of the demanded amount with the Revenue Authorities.

v. Thus, within four weeks from the date of Hon. High

Our Comments:

The Hon. High Court has not insisted on payment of 20% of the disputed tax for granting the stay order, but has shown consideration of the unhealthy financial condition of the assessee. This gives relaxation to the taxpayers facing financial difficulties. Further, the Hon. High Court has made it imperative for the AO to furnish reasons for rejecting the taxpayers' stay applications.

4. ITAT Hyderabad in the case of Dist. Intermediate Educational Office⁷ : Payments made to Contract Teachers with whom Colleges entered into an Agreement for teaching work do not fall within definition of 'Fees for Professional Services' under section 194J and such payments are thus not liable to TDS under section 194J

The assessee was the authority appointed by the State Government to disburse honorarium and remuneration to teachers with whom colleges had entered into agreements to perform teaching work. Such teachers were paid a fixed remuneration not exceeding Rs. 5 lakhs.

The AO considered the payments made by the assessee to the contract teachers as falling within the definition of the expression 'Fees for Professional Services' under section 194J of the Act, and accordingly considered the assessee as assessee in default under section 201(1) of the Act for non-deduction of TDS.

Issue

Whether payments made by the assessee to the contract teachers fall within the definition of 'Fee for Professional Services' and, therefore, are liable to deduction of TDS under section 194J of the Act?

Decision of Hon. ITAT

The Hon. ITAT held that the payments made by the assessee to contract teachers do not fall within the definition of 'Fee for Professional Services' and, therefore, such payments are liable to deduction of TDS under section 194J. So, the assessee cannot be held as 'assessee in default', for not deducting TDS under section 194J.

The Hon. ITAT observed as under:

i. Explanation to section 194J and CBDT Notification

No. 88/2008 dated 28/01/2008 define the expression professional services. The relevant extract of the Act and notification states:

Explanation to section 194J explains "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;"

CBDT Notification No. 88/2008 dated 28/01/2008 notifies 'such other profession' as sports persons, umpires and referrers, coaches and trainers, team physicians and physiotherapists, event managers, commentators, anchors and sports columnists.

- ii. Since in the Explanation to section 194J of the Act, or in the aforesaid Notification, 'contract teachers' are nowhere mentioned, the same fall outside the ambit of professional services.
- iii. The words '**Fee for Professional Services Means**' does not leave any scope for interpretation, and the categories mentioned in the Explanation to section 194J of the Act, or in the aforesaid Notification, are exhaustive. So, by necessary implication, such an exhaustive definition excludes the payments made to the 'contract teachers'.

⁷ Dist. Intermediate Educational Office v. Income-tax Officer (TDS) [2023] 150 taxmann.com 439 (Hyderabad - Trib.)

B. International Tax

1. *ITAT Delhi in Sapein Funds Ltd⁸: Tax Residency Certificate (TRC) is statutorily the only evidence required to be eligible for the benefit under the DTAA – Tax Authorities cannot go behind the TRC and question the TRC*

The Assessee was a Mauritius based Collective Investment Vehicle and SEBI registered Foreign Portfolio Investor (FPI). The Assessee had investors across the world except India and also held a Mauritian Tax Residency Certificate (TRC). The Assessee had no establishment or a PE in India, was managed by individuals who were also residents of Mauritius and was ultimately held by a UK based company. The Assessee, for AY 2017-18, claimed income from derivatives and interest on bonds as exempt.

The AO allowed exemption and assessed income as Nil. But the CIT revised the AO's assessment order.

The CIT denied benefits of Double Tax Avoidance Agreement (DTAA) to the Assessee on the basis that:

- i. the Assessee adopted a tax-avoidance scheme through treaty shopping mechanism
- ii. the Assessee just a conduit and the real owners are the investors of different countries
- iii. TRC is not sufficient to establish the tax residency if the substance establishes otherwise
- iv. the Assessee is not a beneficial owner of income

v. there is no commercial rationale of establishment in Mauritius as the commercial outcomes would be identical irrespective of location of funds

vi. the Assessee did not fulfil the condition of 'liable to tax' in Mauritius

Decision of Hon. ITAT Delhi

The ITAT relied on Delhi HC ruling in **Blackstone Capital⁹** to hold that TRC is statutorily the "*only evidence required to be eligible for the benefit under the DTAA*" and the CIT's attempt to question TRC and to go behind the TRC is "*wholly contrary to the Government of India's consistent policy and repeated assurances to Foreign Investors*".

CIT was wrong on 'liable to tax' aspect because tax exemption provided by the Resident Country (Mauritius) doesn't give an automatic right to the Revenue to tax the income in India.

The ITAT rejected CIT's finding that the Assessee is a conduit, and concluded that the Assessee is a tax resident of Mauritius and is, therefore, legally entitled to DTAA benefits on the strength of the TRC issued by the Mauritius authorities;

2. *ITAT Delhi in Baker Hughes Energy Technologies UK Ltd¹⁰: Presumptive taxation scheme of section 44BB¹¹ will NOT apply in absence of Permanent Establishment of Non-Resident in India.*

Facts

- i. Assessee was a company incorporated in, and a tax resident of United Kingdom (UK). Assessee along with four other consortium members was awarded a contract by ONGC. Under this contract, assessee was required to manufacture and supply subsea production system components.
- ii. It was contended by assessee before AO that offshore manufacture and supply of equipment to ONGC was not taxable in India since neither assessee had a Permanent Establishment (PE) in India nor could provisions of section 44BB be applied to sale of equipment made from outside India.

⁸ Sapein Funds Ltd [TS-308-ITAT-2023(DEL)]

⁹ Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd v. ACIT 2023 SCC OnLine Del 475

¹⁰ Baker Hughes Energy Technologies UK Ltd v. ACIT [2023] 151 taxmann.com 78 (Delhi - Trib.)

¹¹ Section 44BB(I) of the Act reads as under:

"44BB. (1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee, being a non-resident, engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession"

- iii. The AO, however, treated the contract as a composite contract and held that a consortium member was working on behalf of assessee which forms PE of assessee company. The AO further held that assessee was also involved in survey, installation and commissioning of equipment in India and since payments were not divisible, entire receipt of assessee were taxable in India under section 44BB.
- iv. However, question as to when did specific PE come into existence or how offshore supply of equipment was attributable to PE had not been identified by the AO.

Issue

Whether section 44BB will apply without the AO finding that the non-resident assessee had a PE in India?

Decision of Hon. ITAT

- Section 44BB is a computation provision providing for

a presumptive taxation rate for computation of profits but this section does not override the provision of sections 5, 9 or section 90 of the Act.

- Hence, sections 4, 5 and 9 of the Act are to be kept in mind, where assessment is done under section 44BB. It is settled proposition that unless Revenue is able to prove that the assessee has a PE in India, the assessee's business profits cannot be taxed in India.
- The AO has not been able to show when did the PE come into existence or how the offshore supply of equipment is attributable to the PE.
- As referred in judgement of Hon. Supreme Court in the case of **E-Funds**¹², the burden of proving the existence of PE lies on the Revenue which has not been discharged in the present case.
- In this view of the matter, assessee succeeds that there is no finding of PE in this case. Hence, section 44BB will not apply.

Our Comments:

Unless the assessee has a PE in India, its business profits cannot be subject to tax in India. Section 44BB is a provision for computation of business profits (in a presumptive manner) of a non-resident, engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of mineral oils. In absence of PE, such non-resident cannot be taxed under section 44BB.

3. ITAT Mumbai in Smit Singapore (P) Ltd¹³: when control of the ship throughout remained with the assessee and did not get transferred to the charterer, the consideration received by the assessee for chartering of ship cannot be taxed as Royalty since "use" or "right to use" was not passed on to the charterer

The assessee company was incorporated in Singapore. It earned revenues by chartering its ship (vessel). The assessee chartered its vessel along with crew to BOC BV, which in turn had entered into a contract with BG Exploration and Production India Ltd for carrying certain activities in connection with the exploration and extraction of mineral oils in the Tapti Gas Field. The ship charter (hire) income was claimed by the assessee as exempt.

The assessee claimed that the consideration received was for hiring of ship and was not on account of 'use' or 'right to use' of the ship, which in fact throughout

remained with the assessee and was never transferred to BOC BV.

According to the assessee, since the vessel along with the crew was used by the assessee for rendering services to BOC BV, it cannot be held as being in the nature of contract of hiring equipment by BOC BV from the assessee. So, the ship hire charges cannot be taxed as Royalty under either the Act or the Double Tax Avoidance Agreement (DTAA).

The AO did not agree with the assessee and held that the pith and substance of the agreement between the assessee and BOV BV is hiring/leasing/chartering of ship

¹² ADIT v. E-Funds (2018) 13 SCC 294

¹³ Smit Singapore (P) Ltd v. DCIT [2023] 151 taxmann.com 197 (Mumbai - Trib.)

and not providing services by assessee to BG Exploration and Production India Ltd for exploration of prospecting mineral oils.

The AO held that the receipts, in the present case, are in view of the lease of ship and are covered both by clause (iva) of Explanation-2 of section 9(1)(vi) of the Act and Article 12(3)(b) of the India-Singapore DTAA.

The AO, by placing reliance upon the decision of the Hon ble Madras High Court in **Poompuhar Shipping Corporation Ltd**¹⁴, held that the consideration received by the assessee is in the nature of Royalty, since control

and “use” or “right to use” of the ship has been passed on to the charterers. Accordingly, the AO held that ship hire receipts are taxable as Royalty liable for taxation @10% as per the Act and the India-Singapore DTAA.

The Hon. ITAT agreed with the assessee and observed that nothing has been brought on record by the AO to show that during the entire operation, navigation and management of the ship it was not in exclusive control and command of the assessee. Thus, the Hon. ITAT held that the ship hire income cannot be taxed under either the Act or the India-Singapore DTAA.

Our Comments:

The ship charter agreement must be drafted with care and diligence to bring out clearly that (a) the charges for ship chartering are for hiring of ship, and (b) during the entire operation, navigation and management of the ship it remains in the exclusive control and command of the owner of the ship.

C. Transfer Pricing

1. *Calcutta HC in Organon (India) Pvt Ltd*¹⁵: Mere usage of foreign name of the Associated Enterprise (AE) by the Assessee does not make it an International Transaction; selling expenses do not constitute part of Advertisement, Marketing and Promotion (AMP) expenditure

The Assessee outsourced its entire production requirements to toll manufacturers/ contract manufacturers on a license basis. The products manufactured were either of its own or through contract manufacturers and they were subjected to levy of Central Excise Duty. The name of the Assessee's products was based on the word “Organon” i.e. the name of the Associated Enterprises (AE).

HC upheld ITAT's finding that mere usage of foreign word does not automatically make it fall within the ambit of an international transaction.

Issue

Whether the AMP expenditure incurred by the Assessee created marketing intangibles for the AE and whether such AMP expenditure constituted an international transaction?

Decisions of the Revenue Authorities

The Transfer Pricing Officer (TPO) treated the AMP expenditure incurred by the Assessee as an international transaction by holding that the Assessee was only a distributor of AE's products.

The Assessee's case was that incurring of AMP expenditure was not an international transaction and the question of determination of arm's length price of AMP expenditure does not arise, because the Assessee was not just a distributor of AE's products but also a manufacturer of its own products.

Decision of Hon. ITAT

- The ITAT examined the contention of the Revenue that the Assessee's name is 'Organon (India) Pvt Ltd' and that the word “Organon” is not an Indian word. It is the name of the AE. The ITAT held that mere usage of foreign name of the AE word does not make it automatic to fall within the ambit of an international transaction.
- On facts, it was found that the assessee had not paid any royalty or trade-mark fee to its AE, and the assessee had benefited by the excess premium return in the same price of goods. Furthermore, the Tribunal found that AMP expenditure is duly factored into the pricing of goods fixed by the AE. Furthermore, the Tribunal found that the international transactions with the AE namely purchase of raw materials,

¹⁴ Poompuhar Shipping Corporation Ltd [2013] 30 taxmann.com 150 (Madras)

¹⁵ Organon (India) Pvt Ltd [TS-342-HC-2023(CAL)-TP]

purchase of finished goods, sale of finished goods and recovery of expenses have been duly accepted to be at arm's length.

- The next aspect dealt with by the Tribunal was regarding the selling expenses which were sought to be included as part of AMP expenditure by the TPO and the DRP. The Tribunal after thoroughly examining the factual position found that these expenses are purely related to products of the assessee and not for any brand. Further, it found that the total expenditure towards AMP and selling expenditure had duly bifurcated the same by identifying at the time of incurrance itself, whether the said expenditure

constitutes AMP expenditure or selling expenditure.

Judgement of Hon. Calcutta High Court

- We are of the view that in the absence of any material produced before this Court or before the Tribunal to dislodge the factual finding, the order of the Tribunal cannot be interfered nor can it be termed as perverse.
- That apart, the Tribunal rightly held that mere usage of foreign word does not make it automatic to fall within the ambit of an international transaction.
- Selling expenses cannot be included as part of AMP expenditure

2. *Bombay High Court in Kimberly Clark Lever Private Limited¹⁶: The AO can make reference to the TPO for determination of Arm's Length Price only after selecting the case for scrutiny assessment, and so the AO cannot rely upon the TPO's order, passed in a reference by the AO without selecting the case for scrutiny assessment, to reopen the assessment*

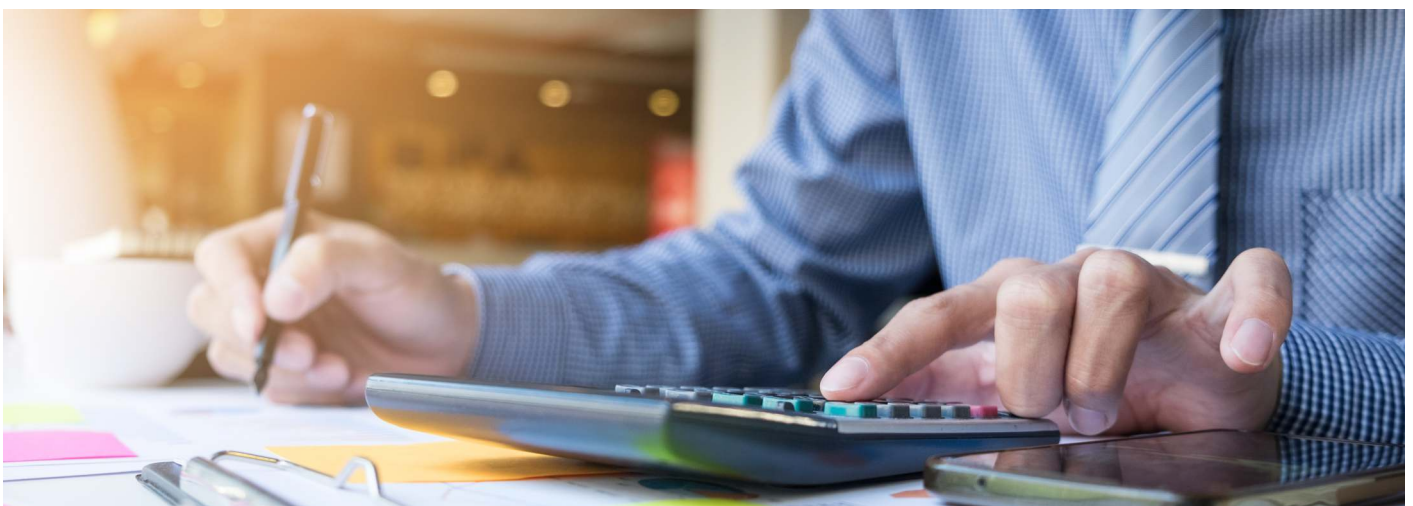
The AO referred determination of Arm's Length Price to the TPO without initiating assessment proceedings by issuing notice under Section 143(2). The TPO made certain adjustments to the Arm's Length Price declared by the assessee. Based on the TPO's order the AO reopened the assessment on the ground that certain income chargeable to tax has escaped assessment.

Judgement of Hon. Bombay High Court

- There must be some material on record to enable the AO to form a belief that certain income chargeable to tax has escaped assessment for the relevant Assessment Year. In this case, the only material relied upon is the order of the TPO.
- The process of determination of Arm's Length Price is to be carried out in the course of assessment

proceedings and not in absence of such proceedings.

- The AO can make reference to the TPO for determination of Arm's Length Price only after selecting the case for scrutiny assessment.
- The Tribunal was correct to hold that when reference was made to the TPO by the AO for determination of Arm's Length Price in relation to the international transaction, no assessment proceedings were pending and hence the reference was invalid. Consequently, the subsequent order passed by the TPO was a nullity in law and void ab initio. In view thereof, the AO could not have relied upon an order of the TPO, which was a nullity, to form a belief that certain income chargeable to tax had escaped the assessment.



¹⁶ Kimberly Clark Lever Private Limited TS-364-HC-2023(BOM)-TP

3. ITAT Mumbai¹⁷: Other Method, not CUP, is the Most Appropriate Method (MAM) for determining Arm's Length Price of Bundle of Sports Broadcasting Rights purchased by the Assessee from its AE; In appeal the Assessee can argue for change of Most Appropriate Method applied in the Transfer Pricing Study Report (TPSR).

This is a decision of Special Bench (3 Members) of ITAT.

Star India Private Limited (the Assessee) purchased Bundle of Sports Broadcasting Rights from its AE. For benchmarking that purchase at arm's length the Assessee applied Other Method in the Transfer Pricing Study Report (TPSR). Under the Other Method the Assessee obtained Valuation Report, of Bundle of Sports Broadcasting Rights, from an independent valuer.

The Transfer Pricing Office (TPO) made TP adjustment qua international transaction of acquiring Bundle of Sport Broadcasting Rights on the basis of deficiencies found in the valuation report submitted by assessee.

When the case came up before the ITAT, the Assessee argued for application of CUP method for benchmarking of the purchase of Bundle of Sports Broadcasting Rights, though in its TPSR, the Assessee had itself applied Other Method (on basis of Valuation Report) as MAM in its TPSR.

Issue

Whether an Assessee is entitled to switch over to a new method, different from the one taken in TPSR, as the MAM?

Decision of Hon. Mumbai ITAT

i. Noting that the Revenue was given full opportunity of hearing aspect of change in method by the Assessee, ITAT, after referring to Rule 10AB of I T Rules and OECD TP Guidelines. held that "an assessee, in principle, can resile from the most appropriate method as was adopted in its transfer pricing study report".

4. ITAT Delhi in ADM Agro Industries Kota & Akola P. Ltd¹⁸: For benchmarking international transactions relating to merchanting trades segment under TNMM 'Berry Ratio', not Operating Profit/Operating Cost (OP/OC), is the appropriate Profit Level Indicator (PLI)

The assessee undertook merchanting trade in agricultural commodities. For merchanting trades segment, the TPO accepted assessee's adoption of

- ii. The Learned Vice President, in minority ruling, held CUP as MAM over 'Other Method' by opining that
- iii. "... if the CUP method is pitted against the 'other method', then there is no prize for guessing that it is the former which will prevail over the latter provided the comparable uncontrolled data required for it is available ... Though the statute does not give priority to any method for selection as the most appropriate method, but the ambit of the 'other method' in contrast to the specific methods makes it a method of last resort because of its relatively lesser exactitude and meticulousness".
- iv. On the other hand, the Learned Accountant Member (i) rejected the CUP method due to absence of comparable uncontrolled transaction prices, and (ii) upheld 'Other Method' being more appropriate to the 'Unique Intangible Asset' in the form of Bundle of Sports Broadcasting Rights.
- v. The Learned Judicial Member agreed with the Learned Accountant Member and found 'Other Method' appropriate over CUP. Of course, the Learned Judicial Member held that CUP Method when pitted against 'Other Method' would prevail, provided reliable data under uncontrolled conditions is available, but in facts of the present case, the 'Other Method' and not the 'CUP Method' was the MAM.
- vi. Thus, while the Learned Vice President (in minority ruling) held CUP as MAM, the Learned Accountant Member and Learned Judicial Member held Other Method' as MAM for determining the arm's length price of Bundle of Sports Broadcasting Rights purchased by the Assessee from its AE.

TNMM as well as the comparables selected by the assessee to apply TNMM. However, the TPO as well the DRP rejected assessee's PLI of Operating Profit/ Value

¹⁷ Star India Private Limited [TS-329-ITAT-2023(Mum)-TP]

¹⁸ ADM Agro Industries Kota & Akola P. Ltd [TS-355-ITAT-2023(DEL)-TP]

Added Cost (OP/VAC - Berry Ratio) by stating that since PLI of comparables is OP/OC, assessee cannot have a different PLI.

Decision of Hon. Delhi ITAT

- i. The Hon. ITAT has held that “where operating expense is considered as a relevant base, there would be no difficulty in using berry ratio as PLI in terms of Rule 10(B)(1)(e)”.
- ii. The Hon. ITAT has referred to the Hon. Delhi HC ruling in **Sumitomo Corporation India Pvt. Ltd**¹⁹ wherein it was held that Berry Ratio can be effectively applied in cases of stripped-down distributors who have no financial exposure and risk in respect of the goods distributed by them.
- iii. The Hon. ITAT has observed that –

- the only variation made by TPO to the assessee’s PLI is to add the cost of goods to the denominator
- however, “operating cost of the comparables are not inclusive of cost of goods, as they are business auxiliary service providers, hence, they do not have any cost of goods”
- since the assessee is found to be functionally comparable to the *business auxiliary service providers*, it establishes that assessee has undertaken limited functions and risk in the concerned segment and has earned only a fixed profit margin

Accordingly, the Hon. ITAT held that the cost of goods cannot be included in the denominator of PLI, and directed the AO to compute Arm’s Length Price by applying PLI of Operating Profit/Value Added Cost (Berry Ratio), excluding the cost of goods.

Our Comments:

The Berry Ratio is useful to compute compensation of limited risk distributors or procurement companies (with zero inventory levels), or even service providers, where the concerned Entity needs to be compensated with reference to Operating Expenses. That is because, in such cases, the Operating Expenses capture the entire value addition, or the whole of the FAR – the value of goods or COGS is thus irrelevant.

Stated differently, where the Gross Profit is realized by performing functions that are fully captured by Operating Expenses, Berry Ratio is the best indicator of profitability.



¹⁹ Sumitomo Corporation India Pvt. Ltd [TS-493-HC-2016(DEL)-TP]

D. CBDT Circulars, Instructions and Notifications

1. *Communication of timelines for providing response under section 245(1) and intimating step by step procedure to be followed by the assesses for providing response to intimation u/s 245(1) issued by Centralised Processing Centre, Bengaluru*²⁰

Intimation under section 245 (1) of the Act is issued by the Centralised Processing Centre to intimate the taxpayers that their previous years' pending tax dues are being offset with the current year's refund. the taxpayers are given opportunity to respond back to this notice communicating whether the demand is Correct or not and whether taxpayer agrees for adjustment of refund against the demand. If a taxpayer misses the deadline to respond to such a notice, then the outstanding demand as on that date will be considered for adjustment against taxpayer's refund.

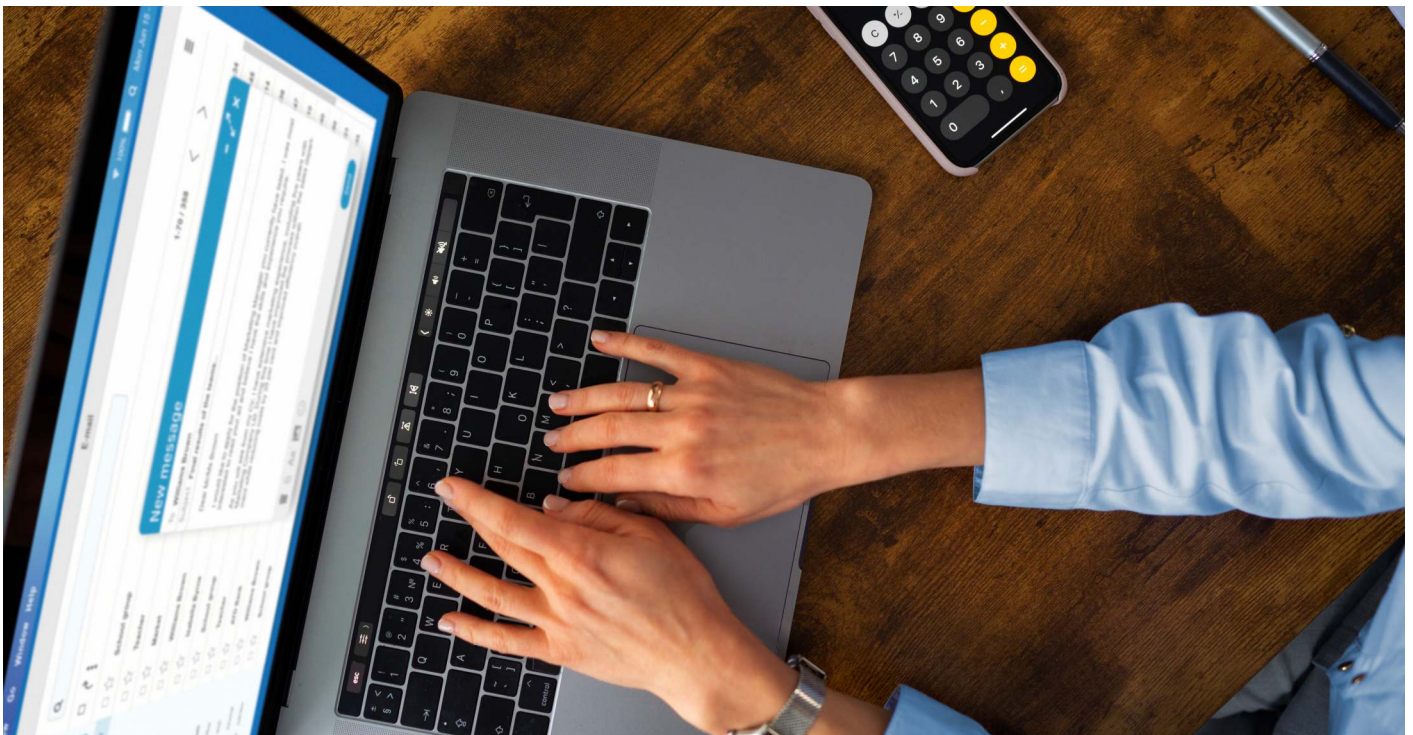
Vide this Instruction the Directorate of Income Tax (Systems) has made a pivotal shift in the response mechanism for outstanding tax demands. The new guidelines streamline the process for taxpayers and Assessing Officers, shifting to a largely online mode of

response. The new Instruction significantly reduces the response time for taxpayers to 21 days for responding to intimation under Section 245 (1) of the Act issued by Centralised Processing Centre. This move aims to expedite the process and prevent undue delay in issuing refunds. Furthermore, the online response system brings transparency and efficiency into the process, eliminating the need for in-person interactions. This will apply with immediate effect.

This Instruction also includes a comprehensive step-by-step guide for taxpayers, detailing the procedures to follow when responding to intimation under section 245(1). The introduction of this detailed guide is commendable as it reduces ambiguity and makes it easier for taxpayers to navigate the income tax system.

Our Comments:

This Instruction marks a significant step towards digitizing and streamlining the income tax system in India. By shortening the response time and facilitating an online response mechanism, the Instruction brings much-needed efficiency to the tax regulation process. As India continues to evolve its tax system, Instructions like these pave the way for a more accessible and efficient taxation landscape.



²⁰ CBDT Instruction No. 01 of 2023, dated 31.05.2023

2. CBDT has notified '348' as the Cost Inflation Index (CII) for Financial Year 2023-24 and subsequent years²¹

If a long-term capital asset is transferred, the Capital Gain is computed after deducting the indexed cost of acquisition and indexed cost of improvement instead of deducting just the cost of acquisition and cost of improvement. The indexed cost is determined on basis of the Cost Inflation Index (CII). The indexed cost, based on CII, is applied in order to mitigate the impact of inflation.

Vide this Notification the CBDT has notified '348' as the

CII for the Financial Year 2023-24 and subsequent assessment years. This CII shall come into force with effect from the 1st day of April, 2024 and shall, accordingly, be used to compute long-term capital gains or losses realised on sale of capital assets during the financial Year 2023-24 and subsequent assessment years.

3. Condonation of delay in filing refund claim and claim of carry forward of losses under Section 119(2)(b)²²

- Earlier, Circular No. 09 of 2015 (the Circular) dated 09.06.2015 prescribed comprehensive guidelines on the conditions and procedure to be followed for deciding applications for condonation of delay in filing Returns of Income (RsOI) claiming refund and RsOI claiming carry forward of loss and setoff thereof under section 119(2)(b) of the Act.
- The monetary limits specified in that earlier Circular are now modified as under:
 - i. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr. CsIT /CsIT) shall be vested with the powers of acceptance or rejection of such applications and claims if the amount of such claims is not more than RS.50 lakhs for any one assessment year.
 - ii. The Chief Commissioners of Income-tax (CCsIT) shall be vested with the powers of acceptance or rejection of such applications and claims if the amount of such claims exceeds Rs. 50 lakhs but is not more than Rs. 2 crores for any one assessment year.
 - iii. The Principal Chief Commissioners of Income-tax (Pr. CCsIT) shall be vested with the powers of acceptance or rejection of such applications and claims if the amount of such claims exceeds Rs. 2 crores but is not more than Rs. 3 crores for any one assessment year.
 - iv. The applications and claims for amounts exceeding Rs. 3 crores shall be considered by the Board.
- The above revised monetary limits for applications and claims in respect of the competent authorities specified hereinabove shall be applicable to the applications and claims filed on and after 01.06.2023.
- The other guidelines prescribed in Circular No. 09 of 2015 dated 09.06.2015 remain unchanged.

4. CBDT extends time limit for submission of Quarter 1 (2023-24) TDS and TCS Statements from 31.07.2023 to 30.09.2023²³

Relaxation is given in respect of the following compliances -

- i. The statement of deduction of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 26Q or Form No. 27Q, on or before 31 July, 2023 under Rule 31A of the Income-tax Rules, 1962 ("the Rules"), may be furnished on or before 30 September, 2023.
- ii. The statement of collection of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 27EQ, on or before 15 July, 2023 under Rule 31AA of the Rules, may be furnished on or before 30 September, 2023.

²¹ CBDT Notification No. 39/2023, dated 12.06.2023

²² CBDT Circular No. 07/2023, dated 31.05.2023

²³ CBDT Circular No. 9/2023, dated 28.06.2023

5. Government gives more time for implementation of revised TCS rates for purposes of LRS, and for inclusion of credit card payments in LRS²⁴

In the Budget this year, certain changes were announced to the system of Tax Collection at Source (TCS) on payments under the Liberalised Remittance Scheme (LRS) and on overseas tour program packages. These were to take effect from 01.07. 2023. It was also announced in March that credit card payments would be brought under the LRS.

After that the Government had notified Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 vide an e-gazette notification dated 16th May 2023 to remove the differential treatment for credit cards vis à vis other modes of drawal of foreign exchange under LRS.

In response to various comments and suggestions the Ministry of Finance has decided to make suitable changes. Firstly, it has been decided that **there will be no change in the rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of mode of payment, for amounts up to Rs. 7 lakh per individual per annum.** It has also been decided to give more time for the implementation of the revised TCS rates and for inclusion of credit card payments in LRS.

The changes are detailed below:

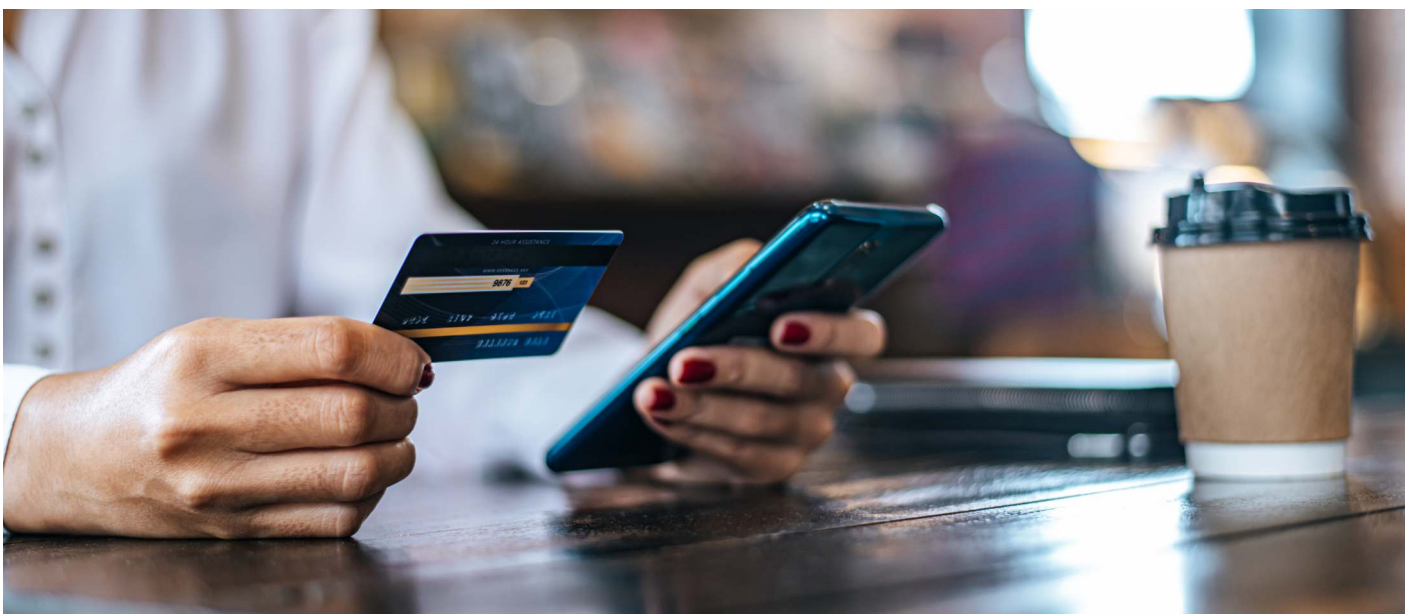
i. To give adequate time to Banks and Card networks to put in place requisite IT based solutions, the Government has decided to postpone the implementation of its 16th May 2023 e-gazette notification. **This would mean that transactions**

through International Credit Cards while being overseas would not be counted as LRS and hence would not be subject to TCS. The Press Release dated 19th May 2023 stands superseded.

- ii. Threshold of Rs. 7 Lakh per financial year per individual in clause (i) of sub-section (1G) of section 206C shall be restored for TCS **on all categories of LRS payments, through all modes of payment, regardless of the purpose:** Thus, for first Rs 7 Lakh remittance under LRS there shall be no TCS. Beyond this Rs 7 Lakh threshold, TCS shall be -
- 0.5% (if remittance for education is financed by education loan);
 - 5% (in case of remittance for education/medical treatment);
 - 20% for others.

For purchase of overseas tour program package under Clause (ii) of Sub-section (1G), the TCS shall continue to apply at the rate of 5% for the first Rs 7 lakhs per individual per annum; the 20% rate will only apply for expenditure above this limit.

- iii. Increased TCS rates to apply from 1st October, 2023: The increase in TCS rates; which were to come into effect from 1st July, 2023 shall now **come into effect from 1st October, 2023** with the modification as in (ii) above.



²⁴ Ministry of Finance Press Release, dated 28.06.2023



Benami Property Act

1. *Calcutta HC in Sekhar Kumar Roy*²⁵: the burden of proving that a particular transaction is benami, and the apparent purchaser is not the real owner, always rests on the person asserting it to be so.

Pursuant to the death of the Appellant's father, the Appellant and the Respondents (Mother and Sister of the Appellant) inherited one-third of the property each and the Respondents rejected the Appellant's request to effect partition of the suit property by metes and bounds.

The Appellant contended that his deceased father (Mr. Sailendra Kumar Roy) purchased a property in his mother's name who did not contribute any money towards its consideration since she had no independent income at the time of purchase of the property.

The Respondents claimed that: (i) the property was purchased by the Appellant's mother from her 'stridhan' and then she got the building constructed, (ii) she was the absolute owner of the property vide deed of conveyance dt. Jan 1, 1970 which had never been challenged by the Appellant or his father at any point of time, and (iii) mere payment of requisite consideration money does not, ipso facto, prove the transaction to be benami.

Judgement of Hon. Calcutta High Court

- i. Calcutta HC rejected Appellant's plea against his mother and sister for partition of property after father's demise on the basis that his mother was only the name lender and not the owner of the property.
- ii. HC relied on SC ruling in *Jaydayal Poddar v. Mst. Bibi Hazra*²⁶ wherein it was held that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so.
- iii. HC observed that the Appellant is alleging that his mother is mere name lender but could not confirm whether his father paid the consideration money nor

did he have any document to show that his father paid the consideration money.

- iv. HC rejected Appellant's plea that since both the parties have led evidence, question of burden of proof has lost its significance and judgment should be passed by appreciating the evidence, remarking -
“Source of money is, no doubt, an important factor but not a decisive one... even if it is proved that Sailendra paid the consideration money, the plaintiff must further prove that Sailendra really intended to enjoy the full benefit of the title in him alone.”;
- v. HC opined that the Appellant could not bring any evidence even to show what was amount of consideration money and how the consideration money was paid and how the suit property was purchased and even he could not prove who paid the consideration money, further no document relating to the property were produced whereas the title deed and all the documents relating to the property were all along in the custody of the Respondent mother, who paid municipal tax and got the suit property mutated in her name;
- vi. HC states that Appellant could not bring any evidence on record to lead any prudent man to infer that his father had a motive to create benami in name of his mother or his father intended to enjoy the full benefit of the title in him alone;
- vii. Accordingly, the HC upheld the Lower Court's finding that the Appellant failed to discharge the burden of proving that transaction is a benami transaction.

²⁵ Sekhar Kumar Roy [TS-307-HC-2023(CAL)]

²⁶ Jaydayal Poddar v. Mst. Bibi Hazra AIR 1974 SC 171



Company Law

1. Ministry of Corporate Affairs (MCA) grants extension for filing Form DPT-3: Due date of filing Form DPT-3 (Return of Deposits) is extended - the original due date of June 30, 2023, has been moved to July 31, 2023²⁷

Ministry of Corporate Affairs (MCA) has granted an extension for filing Form DPT-3, which pertains to the return of deposits, by one month. The original due date of June 30, 2023, has been moved to July 31, 2023. This decision comes in light of the transition of the MCA-21 Portal from Version-2 to Version-3. The announcement was made through General Circular no. 06/2023 issued by the Ministry. The extension in the due date provides relief to companies, allowing them more time to comply with the filing requirements for the Financial Year ended on March 31, 2023. By extending the deadline, companies can avoid paying additional fees that would have been applicable for late filing. This decision

acknowledges the challenges posed by the transition of the MCA-21 Portal and aims to facilitate a smoother filing process for businesses.

The Ministry of Corporate Affairs' decision to extend the due date for filing Form DPT-3 demonstrates its commitment to supporting businesses during the transition period. Companies now have until July 31, 2023, to complete the filing without incurring any additional fees. It is essential for stakeholders to take note of General Circular No. 06/2023 and ensure compliance within the revised timeline provided by the Ministry.

²⁷ General Circular No.06/2023, dated 21.06.2023



Securities and Exchange Board of India (SEBI) Regulations

1. SEBI issues Master Circular: Much needed clarity on the Scheme of Arrangement by Listed Companies²⁸

SEBI has come out with a Master Circular on:

- i. Scheme of Arrangement by Listed Entities and
- ii. Relaxation under Sub- rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 ON 20th June 2023.

Key points of the Master Circular are as under:

- i. SEBI, from time to time, has been issuing various circulars and directions which lay down the detailed requirements to be complied by listed entities while undertaking Schemes of Arrangements.

In order to enable the users to have access to the applicable circulars at one place, this Master Circular on Scheme of Arrangements has been issued. With the issuance of this Master Circular, the directions and instructions contained in the Circulars listed out in Schedule I to this Master Circular shall stand rescinded.

- ii. The Master Circular contains:
 - a. Requirements before the Scheme of Arrangement

is submitted for sanction by the National Company Law Tribunal (NCLT)

- b. Application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957
- c. Format of the Compliance Report to be submitted along with the draft scheme
- d. Computation of Fair Share Exchange Ratio
- e. Format for Auditor's Certificate
- f. Format for Report on Complaints
- g. Format for report on unpaid dues
- h. Format of the Compliance Report to be submitted along with the application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957) if listing of Non-Convertible Redeemable Preference Shares (NCRPS) / Non-Convertible Debentures (NCDs) is envisaged through a Scheme of Arrangement

Our Comments:

With the issue of this Master Circular, much needed clarity on the Schemes of Arrangements by Listed Companies is now available at one place. It is notable that this Master Circular is not applicable for the Scheme of Arrangement between a Wholly Owned Subsidiary and its Listed Holding Company.

2. SEBI Notifies Amendments to the Listing Regulations: ensures timely and accurate disclosure on all the material matters as well as strengthens compliance for listed companies²⁹

The SEBI on 14th June 2023 notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023. This amendment shall

come into effect from 14th July 2023. The amendments are aimed at ensuring timely and accurate disclosure on all the material matters as well as strengthening

²⁸ Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93, dated 20.06.2023

²⁹ SEBI Notification No. SEBI/LAD-NRO/GN/2023/131, dated 14.06.2023

compliance for listed companies.

The major amendments include:

- Filling of vacancy of Key Managerial Person within 3 months of vacancy

Regulation 6(1) of the SEBI LODR Regulations requires a listed company to appoint a qualified Company Secretary as the Compliance officer.

As per the Companies Act, 2013, vacancy of a KMP (i.e., Company Secretary, CFO and CEO/MD/WTD) shall be filled within 6 months from the date of such vacancy.

As per the amendment, SEBI inserted Regulation 6(1A) and Regulation 26A which states that any casual vacancy in the office of KMP shall be filled by the listed entity within 3 months from the date of such vacancy.

Hence, the timelines for filling the casual vacancy of KMP for listed entities is thereby reduced from 6 months to 3 months since additional responsibilities are assigned to the KMP.

- Non-Permanency of the Directors on the board of the Company

SEBI inserted Regulation 17(1D), which states that the continuation of the directors on the board of the listed entity as on March 31, 2024, shall be subject to the shareholders' approval in the first general meeting to be held after March 31, 2024.

Further, the continuation of a director serving on the board of directors of a listed entity shall be subject to the shareholders' approval in the general meeting at least once in every five years from the date of their appointment or reappointment.

The regulation shall **not** apply to:

- i. WTD, MD, Manager, Independent Director, or a director retiring as per Sec 152(6) of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the directors or Managers is otherwise provided for by the provisions of this regulations or the Companies Act, 2013 and has been complied with.
- ii. Directors appointed pursuant to the order of a Court or a Tribunal.
- iii. Nominee Director of the Government on the board of the listed entity, other than a public sector company.
- iv. Nominee Director of a financial sector regulator on the board of the listed entity.

v. Director nominated by a financial institution registered/ regulated by the RBI under a lending arrangement in its normal course of business.

vi. Director nominated by a Debenture Trustee registered with the Board under a subscription agreement for the debentures issued by the listed entity.

- Threshold based criteria for determining the materiality of events/information.

As per Regulation 30(1) of the LODR, every listed entity shall make disclosures of any events or information which in the opinion of the BOD of the listed entity, is material.

As per Regulation 30(4), earlier there was no threshold-based criteria for determining materiality. SEBI has now introduced the below mentioned criteria to determine whether an event or information is material or not.

The omission of an event or information, whose value, or the expected impact in terms of value, exceeds the lower of the following.

- i. 2% of Turnover, as per the last audited consolidated financial statements of the listed entity;
- ii. 2% of Net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;
- iii. 5% of the average of the absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity.

Revised timelines for disclosure of material events/information

As per Regulation 30(6) of the LODR, a listed entity needs to intimate and disclose information to the stock exchange not later than 24 hours from the occurrence of the material events/information.

SEBI has specified clear timelines for disclosure of material events/ information to stock exchange which are described as follows:

- i. Within 30 minutes from the closure of the Board meeting in which the decision pertaining to the event or information has been taken;
- ii. Within 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;
- iii. Within 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:



Accounting Standards

1. Ministry of Corporate Affairs amends the Companies (Indian Accounting Standards) Rules, 2015: In Ind As 8 there is change in the definition of accounting estimate³⁰

- i. Ministry of Corporate Affairs amended the Companies (Indian Accounting Standards) Rules, 2015 by Notification No. G.S.R.242(E) dated 31st March 2023. The said amendment will come into effect from 1st April 2023.
- ii. As per the Notification, definition of “accounting estimate” defined in para 5 of Ind As 8 “Accounting policies, changes in accounting estimates and error” is amended.
- iii. **Old Definition:**

“A change in **accounting estimate** is an adjustment of the carrying amount of an asset or a liability, or the amount of the periodic consumption of an asset, that results from the assessment of the present status of, and expected future benefits and obligations associated with, assets and liabilities. Changes in accounting estimates results from new information or new developments and, accordingly, are not corrections of errors.”
- iv. **New Definition:**

“A change in **accounting estimates** are monetary amounts in financial statements that are subject to measurement uncertainty.”
- v. In addition, Para 32 is also amended to include examples of accounting estimates used other Indian Accounting standards like Ind As109 “Financial Instruments”, Ind As 2 “Inventory”, Ind As 113 “Fair Value Measurement”, Ind As 16 “Property, Plant and Equipment” and Ind As 37 “Provisions, Contingent Liabilities and Contingent Assets”. Para 32A and 32B are inserted to clarify -
 - Measurement techniques, used for accounting estimate include estimation techniques and valuation techniques.
 - Estimate in Ind As may sometime refers to an estimate that is not an accounting estimate as defined in this standard.

Our Comments:

- i. ‘Accounting estimate’ is now defined by way of much broader meaning. Each monetary item is covered under the new definition, whereas under the old definition only assets and liabilities were covered.
- ii. As per the old definition any new development or new information was the reason for change in estimates, but now as per the new definition change in measurement of estimates, without any new information or new development, is also covered.
- iii. The new definition redefines the line between changes due to errors and changes due to estimates.

³⁰ Notification no G.S.R.242(E), dated 31.03.2023

Compliance Calendar - July 2023

A. Income Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	7th July	June 2023	TDS Payment	Non-Government Deductors
2.	15th July	June 2023	Provident Fund (PF) and Employee State Insurance Corporation (ESIC) Returns and Payment	All deductors
3.	15th July	April 23 – June 23	Upload the declarations received from recipients in Form No. 15G/15H	Tax on the total income including PPF balance withdrawn is Zero.
4.	15th July	April 23 – June 23	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC	Authorized dealer
5.	30th July	June 2023	TDS Payment in Form 26QB (Property), Form 26QC (Rent), Form 26QD (Contractor Payment)	Non-Government deductors
6.	31st July	April to June 2023	TDS Returns in Form 24Q	Non-Government deductors
7.	31st July	Financial Year 22-23	Return of income for the assessment year 2023-24 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or (d) an assessee who is required to furnish a report under section 92E.	For all Taxpayers

Notes:

1. CBDT extends vide Circular No 9/2023 the due dates:

- A. TDS statement in Form 26Q & 27Q for the period Apr-June 23 is extended from 31st July 2023 to 30th September 2023
- B. TCS statement in Form 27EQ for the period Apr-June 23 is extended from 15th July 2023 to 30th September 2023

B. Goods and Service Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	10th July	June 23	GSTR – 7 (TDS)	Person required to deduct TDS under GST
2.	10th July	June 23	GSTR – 8 (TCS)	Person required to collect TCS under GST
3.	11th July	June 2023	GSTR 1	<ul style="list-style-type: none"> a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme

4.	13th July	April 23 - June 23	GSTR - 1 - QRMP	Aggregate Turnover is up to Rs. 5 crores
5.	13th July	June 23	GSTR – 6 (ISD)	Person registered as ISD
6.	18th July	April 23 – June 23	CMP-08	Person Registered under Composition Scheme
7.	20th July	June 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.	13th July	June 23	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
9.	20th July	June 23	GSTR - 5A (OIDAR)	OIDAR services provider
10.	22nd July	April 23 – June 23	GSTR – 3B - QRMP (for April - June 23) (D) *	Aggregate Turnover is up to Rs. 5 crores
11.	24th July	April 23 – June 23	GSTR – 3B - QRMP (for April - June 23) (E)**	Aggregate Turnover is up to Rs. 5 crores

* 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

Source: GST Portal

C. MCA Compliance

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	31th July	Financial Year 22-23	Filing of return of deposits / exempted deposits in form DPT-3 (due date extended till 31st July)	All Companies

C. FEMA Compliance

Sr No.	Due Dates	Particulars	Applicable to
1.	7th July	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non resident lenders
2.	15th July	Form FLA Return – based on unaudited financials	Any company who has either made ODI or received FDI



About us

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

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

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

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

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

We are a Member Firm of Morrison Global, a leading international association of high-quality Professional Service Firms.

Our Locations

MUMBAI (H.O.)

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

Tel.: +91 022 4343 9191

BRANCH OFFICES:

3rd Floor, Solitaire Corporate Park - Bldg IV, Chakala,
Andheri, Mumbai - 400 056.

Tel.: +91 022 4141 9191

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

Tel.: +91 022 4604 1995

PUNE

1244-B, Shreeram Apt., Lane Adjacent to L.D. Bhave
Gas Agency, Apte Road, Deccan Gymkhana,
Pune - 411004.

Tel.: +91 20 2553 0144

DELHI

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

Tel: +91 011 4365 6583 | 84

AHMEDABAD

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

Tel: +91 079 4003 9647

L: +91 22 4343 9191

F: +91 22 2283 27 27

E: mail@bhutashah.com

W: www.bhutashah.com

Disclaimer:

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