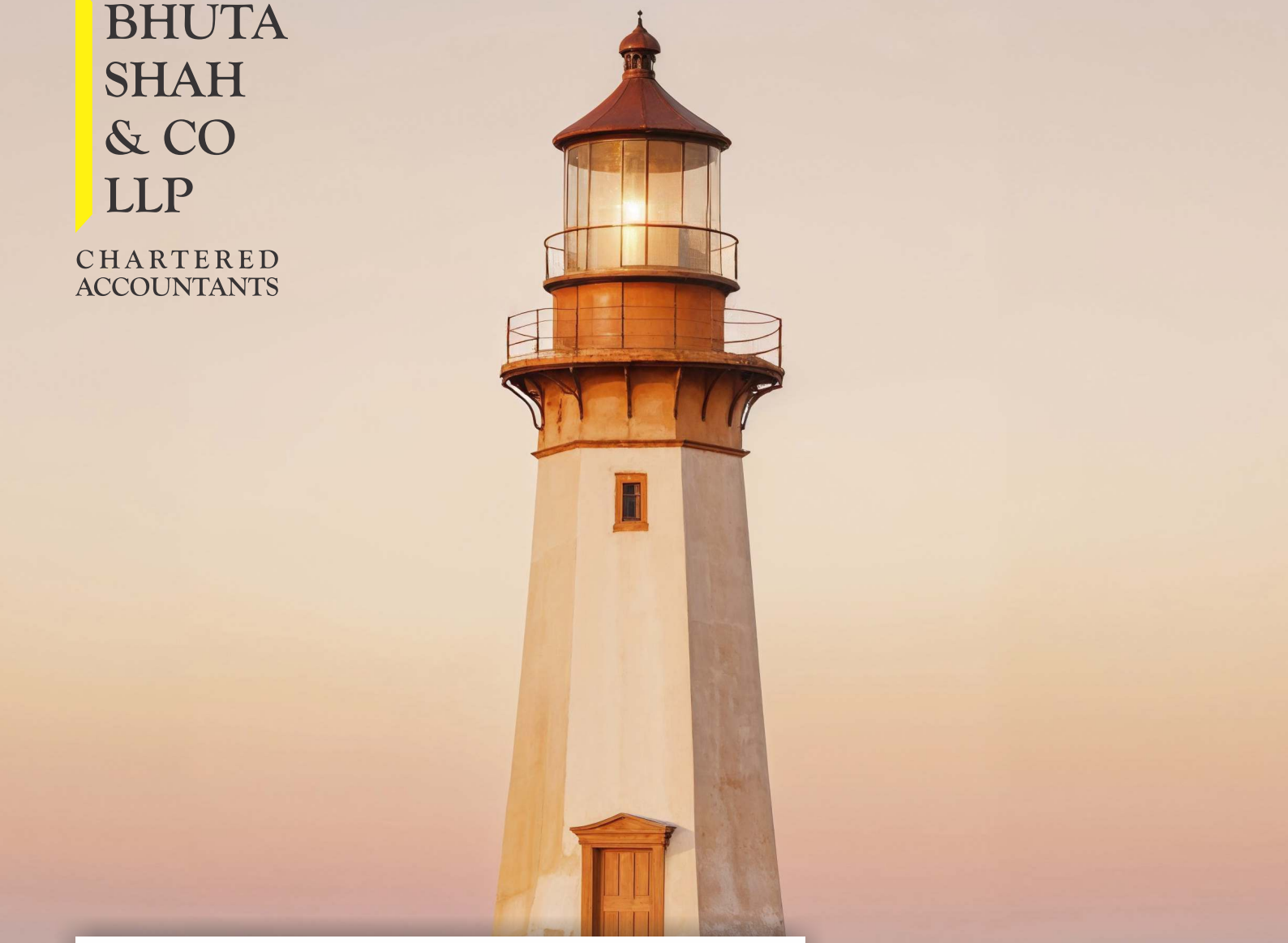
BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS



BSC BEACON

Tax & Regulatory Insights

MAY 2024

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
ALP	Arm's Length Price
AO	Assessing Officer
AE	Associate Enterprise
AY	Assessment Year
CASS	Computer Assisted Scrutiny Selection
CIRP	Corporate Insolvency Resolution Process
CIT	Commissioner of Income-tax
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(IT)	Commissioner of Income-tax (International Taxation)
CBDT	Central Board of Direct Taxes
DIT	Directorate General of Income Tax
DRI	Directorate of Revenue Intelligence
DCIT	Deputy Commissioner of Income Tax
DRP	Dispute Resolution Panel
HC	High Court
Hon'ble	Honorable
IBC	Insolvency and Bankruptcy Code
ITC	Input Tax Credit
ITAT	Income Tax Appellate Tribunal
JAO	Jurisdictional Assessing Officer
JDA	Joint Development Agreement
Ld.	Learned
NFAC	National Faceless Assessment Centre
NCD	Non-Convertible Debentures
NCLT	National Company Law Tribunal
NRI	Non-Resident Individual
OP/OC	Operating Profit / Operating Cost

ABBREVIATION	FULL FORM
PAN	Permanent Account Number
PE	Permanent Establishment
PY	Previous Year
PCIT	Principal Commissioner of Income Tax
PCCIT	Principal Chief Commissioner of Income Tax
Rules	Income-tax Rules,1962
SC	Supreme Court
SDT	Specific Domestic Transaction
SCN	Show Cause Notice
TP	Transfer Pricing
TPO	Transfer Pricing Officer
TPSR	Transfer Pricing Study Report
TNMM	Transactional Net Margin Method

I. Direct & International Taxation

A. Corporate Tax

1. *Hon'ble Bombay High Court[1]: Reassessment cannot be based solely on reasons borrowed from DRI information & M B Shah Commission Report without any application of mind.*

Background

Balaji Mines and Minerals Pvt. Ltd ('the Assessee') was in receipt of notices under Section 148 of the Act for the AY 2009-10, AY 2010-11 and AY 2011-12. The issue of the said notices under Section 148 of the Act was based on the allegation of under-invoicing of exports, income arising from illegal activities and commission paid to foreign agents. The Assessee filed a writ petition challenging the notices issued as the same were based only on the Justice M B Shah Commission's Inquiry Report and information from Directorate of Revenue Intelligence (DRI) and no independent enquiry was contended by the AO.

Judgement of Hon'ble Bombay High Court

The Hon'ble Bombay High Court found that the Ld. AO did not provide any independent reasoning or material to support the reopening of the assessment. The Hon'ble Bombay High Court held that reasons for reopening must have a live link and tangible material to justify their validity.

In this case, the Hon'ble Bombay High Court concluded that the reasons lacked independent inquiry and were merely borrowed from other authorities without further reasoning. The Hon'ble Bombay High Court relied on the co-ordinate bench judgment in the case of **PCIT Vs. Shodiman Investment (P) Ltd[2]** wherein it was held

[1] ACIT vs. Balaji Mines and Minerals Pvt Ltd [TS-285-HC-2024](BOM)

[2] (2018) 93 taxmann.com 153 (Bombay)

that mere borrowing of material from other department by itself did not result in reason to believe that income has escaped assessment and that it must be independently formed with nexus to material obtained that there was an escapement of income. Therefore, the Hon'ble Bombay High Court quashed and set aside the notices and orders rejecting objections filed by the Assessee, stating that they lacked valid reasons for reassessment.

2. ***Hon'ble Bombay High Court[3]:*** *Quashes assessment order over disparity in the show-cause notice as it holds that show-cause notice is not an empty formality.*

Background

Vivek Jaisingh Asher ('the Assessee') filed his return of income for AY 2020-21 on 29.12.2020. Pursuant to a JDA between the builder and the Assessee, the Assessee was allotted a new flat in the redeveloped building with the stamp duty value bearing Rs. 11.68 crores. The Assessee claimed 'capital gain deduction' under Section 54F on the premise that the surrender of his tenancy rights which fetched a consideration of Rs 11.68 Cr. was reinvested in the new flat allotted to the Assessee. The case was selected for scrutiny under CASS to examine claim of 'Capital Gain deduction' and thereafter, various notices under Section 142(1) of the Act were issued. Further, a show-cause notice as to why the stamp duty value should not be treated as deemed income under Section 56(2)(x) of the Act and deduction under Section 54F of the Act be denied was issued to the Assessee. Despite the submissions in response to such SCN made by the Assessee, the Faceless AO passed the final assessment order making an addition under Section 69 of the Act as 'unexplained investment' without making any reference to Section 56(2)(x) in the operative part of the assessment order. The Faceless AO stated that as the order was getting time barred so no SCN could be issued. Aggrieved by the impugned notice, the Assessee filed a writ petition.

Judgment of the Hon'ble Bombay High Court

The Hon'ble Bombay High Court observed that the original SCN is defective as it fails to specify the exact provisions under which the Tax Authorities seeks to assess the stamp duty value as deemed income of the Assessee i.e., either under Section 56(2)(x)(a) or Section 56(2)(x)(b), both of which deals with deemed addition. Further, the Hon'ble Bombay High Court noted that there was a clear 'go by' given by the Tax Authorities in the assessment order disregarding Section 56(2)(x) of the Act and proposing addition under Section 69 of the Act. Thus, the Hon'ble Bombay High Court quashed the impugned assessment order.

[3] Vivek Jaisingh Asher [TS-305-HC-2024] (BOM)

3. ***Hon'ble Bombay High Court[4]:*** *Upholds the ITAT order restricting disallowance to profit element in case of bogus purchases when the sales are not disputed by the AO.*

Background

The AO initiated reassessment proceedings of M/s. Max Flex and Imaging systems ltd. ('the Assessee') for the period from AY 2006-07 to AY 2009-10 by issuing notices under Section 148 of the Act for the respective AYs. The basis of reopening of assessment was the information received from the Sales Tax Department that certain dealers were indulging in providing accommodation entries and Assessee was a beneficiary of such transactions.

The reassessment proceedings were completed by AO and an order under Section 147 of the Act was passed wherein the disallowance in respect of purchases were made. The Assessee filed an appeal before the CIT(A) who sustained the addition made by the AO. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Mumbai ITAT which has partly reversed the addition by restricting the disallowance to 12.5% of the purchases.

Aggrieved by the order passed by the Hon'ble Mumbai ITAT, the Tax Authorities filed an appeal before the Hon'ble Bombay High Court.

Judgment of the Hon'ble Bombay High Court

The Hon'ble Bombay High Court noted, the concurrent findings of the Hon'ble Mumbai ITAT and the CIT(A) that Assessee has produced ledger copies of concerned parties, purchase bills, bank statements, PAN card, purchase confirmation of suppliers, and proof of payments having been made through cheques to prove the genuineness of transaction. However, the Ld. AO had relied only on the information

[4] PCIT vs. Max Flex and Imaging systems Ltd [TS-269-HC-2024] (BOM)

provided by the Sales Tax Department to suggest that purchase transactions were non-genuine.

Hon'ble Mumbai ITAT noted that the Ld. AO did not consider the sales as bogus and did not make the inquiries to ascertain the genuineness of the purchase transactions. Further, the Hon'ble Bombay High Court also considered the finding of Hon'ble Mumbai ITAT that notices under Section 133(6) of the Act were not issued to the suppliers to make any further enquiries. The Hon'ble Mumbai ITAT has restricted the addition to 12.5% of the purchases based on estimated gross profit margin.

Accordingly, the Hon'ble Bombay High Court has held that only the profit element in the alleged bogus purchases amount can be treated as income, particularly, when the sales have not been disputed.

Since estimating the gross profit is a question of fact, the Hon'ble Bombay High Court dismissed the appeal filed by Tax Authorities.

4. ***The Hon'ble Bombay High Court[5]:*** *Reassessment notice quashed on the basis of non-application of mind and lack of independent verification of information received from DG-GST.*

Background

KEC International Ltd (' the Assessee') received a notice under Section 148A(b) of the Act from an AO (not being JAO). In response, the Assessee has furnished all the details. The AO noted from the information received from Director General of GST, Mumbai, that M/s. Curzen Infraprojects Pvt Ltd was alleged to be engaged in generating fake / bogus invoices for passing of fraudulent ITC to various companies including M/s. EMI Transmission Ltd.

The notice under Section 148A(b) of the Act was issued to the Assessee on the basis that the Assessee has purchased goods from M/s. EMI Transmission Ltd and alleged that the purchase transaction was non-genuine. However, the Assessee furnished all the details in his submission – viz., copies of purchase invoices, e-way bill, transport bill, proof of payments made through banking channels and most importantly, the documentary evidence in support of fact that goods purchased from EMI Transmission Ltd were actually supplied to third parties.

However, the Ld. AO passed an order under Section 148A(d) of the Act considering the case of Assessee as fit case for reassessment and issued a notice under Section 148 of the Act after seeking approval under Section 151 of the Act.

[5] KEC International Ltd [TS-330-HC-2024(BOM)]

Aggrieved by the order issued under Section 148A(d) and notice issued under Section 148 of the Act, the Assessee filed a writ petition before the Hon'ble Bombay High Court.

Judgment of the Hon'ble Bombay High Court

The Hon'ble Bombay High Court agreed with the contention of the Assessee that the AO has neither applied his mind nor analysed the submission made by the Assessee. Hence, the Hon'ble Bombay High Court held that there was total non-application of mind on the part of the AO and therefore, disposed of the petition in the favour of the Assessee. The Hon'ble Bombay High Court quashed the impugned notice under Section 148 of the Act as well as the impugned order under Section 148A(d) of the Act and remanded the matter for de-novo consideration to the JAO. On prayer of the Assessee, the Hon'ble Bombay High Court directed the JAO to provide all the documents and information to the Assessee based on which notice under Section 148A(b) of the Act was issued.

5. *The Hon'ble Bombay High Court[6]: No notice can be issued post CIRP under Section 148 of the Act on the new management of Assessee. Tax Authorities can take any action under the law, if any, against the ex-director/promoter other than issuing the notice under Section 148 of the Act to collect third party evidence.*

Background

Patanjali Foods Ltd. (formerly known as Ruchi Soya Industries Ltd – the Assessee) has received a notice issued under Section 148 of the Act post receipt of order on CIRP by the Hon'ble NCLT. Aggrieved by the impugned notice, the Assessee has filed a writ petition before the Hon'ble Bombay High Court.

[6] PCIT vs Patanjali Foods Ltd [TS-284-HC-2024] (BOM)

Judgement of Hon'ble Bombay High Court

The Hon'ble Bombay High Court relied on an earlier judgment in the case of Alok Industries Limited v. ACIT[7] wherein reassessment order was issued under Section 147 and penalty proceedings were initiated under Section 271(1)(c) of the Act on Alok Industries Ltd (AIL). The basis for initiating the reassessment proceedings on the new management of the AIL was to gather evidence related to third parties, ex-promoters, etc. The Hon'ble Bombay High Court noted that reassessment order and penalty notice were issued after the resolution plan of AIL was approved by the NCLT under the IBC. This resolution plan stated that all debts, including tax dues, were deemed fully discharged as of the closing date. The Hon'ble Bombay High Court held that once a resolution plan is approved under the IBC, it binds all creditors, including government authorities, and extinguishes all previous dues.

During the course of proceedings, the Hon'ble Bombay High Court followed the principle laid down by the judgment of Hon'ble Supreme Court in case of Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd.[8] that all dues including statutory dues owed to Central Government, State Government, or any other local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for a period, prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the Code, could be continued.

Also, the Hon'ble Bombay High Court noted that as per Section 156A of the Act, if any amount is payable by the Assessee for which a notice of demand was issued, is reduced as a result of an order passed by the Adjudicating Authority under the IBC, then Ld. AO shall modify the demand by giving effect to the order of the resolution plan.

The Hon'ble Bombay High Court held that when separate provision under Section 133(6) of the Act are available for collection of evidence, Section 148 of the Act could not be invoked. Further, the Hon'ble Bombay High Court held that initiating reassessment proceedings for collecting the evidence in respect of third parties or ex-promoters is not within the scope and ambit of Section 147 and Section 148 of the Act. The reassessment proceedings under Section 147 and Section 148 of the Act can only be initiated for bringing to tax income which has escaped assessment. Therefore, the Hon'ble Bombay High Court disposed of the petition filed by AIL by quashing the reassessment order under Section 147 and penalty notice under Section 271(1)(c) of the Act.

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[7] Alok Industries Limited v. ACIT [2024] 161 taxmann.com 285 (Bombay)

[8] (2021) 9 SCC 657

Based on the above judicial precedent, the Hon'ble Bombay High Court disposed the petition filed by the Assessee and held that no notice can be issued under Section 148 of the Act on the new management to gather evidence on ex-promoters post the date of approval of resolution plan. However, the Hon'ble Bombay High Court clarified that if Tax Authorities wants to take any other steps as they proposed to, they may do so in accordance with law.

6. *The Hon'ble Allahabad High Court[9]: Held that no penalty should be imposed under Section 271AAC until the pending quantum appeal is decided by CIT(A).*

Background

Neelam Dubey ('the Assessee') had invested INR 41 Lakhs out of amounts transferred from a bank account of her spouse on his demise in Omaxe Avenue scheme in 2016. In 2022, a search was conducted on Omaxe Group. During this search, certain excel sheets were found by the Tax Authorities and based on which a notice under Section 147 of the Act was issued to the Assessee. The Tax Authorities alleged that the Assessee has received an unaccounted cash of Rs. 4.10 Crores in October 2018 which was earlier deposited in cash in Omaxe Group in November 2016.

A show-cause notice under Section 148A(b) of the Act was issued to the Assessee and reply to said notice was filed. However, the Ld. AO passed an order under Section 148A(d) of the Act dated 27.03.2023 and issued a notice under Section 148 of the Act. Further, the Ld. AO passed the protective assessment order for AY 2019-20 on 24.03.2024. The Ld. AO also initiated penalty proceedings as per Section 271AAC of the Act.

Aggrieved by the order passed by Ld. AO, the Assessee filed an appeal before

[9] Neelam Dube [TS-316-HC-2024] (All)

Hon'ble CIT(A). Simultaneously, the Assessee also filed writ petitions before the Hon'ble Allahabad High Court praying for an order quashing notice under Section 148A(b), order under Section 148A(d) and notice under Section 148 of the Act with respect to AY 2019-20 and AY 2017-18.

The Tax Authorities contended that final orders for AY 2019-20 has been passed and assessment is ongoing for AY 2017-18. It also stated that arguments raised by the Assessee regarding the facts of the case can be raised before the appellate authority [i.e., Ld. CIT(A)]. The scope of decision under Section 148A(d) of the Act is limited to the existence or otherwise of information which suggests that income chargeable to tax has escaped assessment. Further, the Tax Authorities contended that the material found during the course of search revealed that Assessee has earned an interest income of Rs. 13 Lakhs on her investment made in Omaxe Group.

Per Contra, the Assessee stated that the interest income received by the Assessee has been derived from investments made by her spouse in bank FDs and other schemes. Hence, the said interest cannot be pinned down to the investments made in Omaxe Group only.

The Assessee also contended that no penalty notice can be issued on an uncertain assessment order as no substantive assessment order has yet been issued. There can be no protective penalty order although there can be a protective assessment order. In support of this contention, the Assessee relied on the judgment of Hon'ble Gujarat High Court in case of Bhailal Manilal Patel vs. CIT[10] wherein it was held that even though protective assessment order can be passed, unless such assessment is finalized, no notice under Section 271AAC of the Act can be issued for imposing penalty.

Judgement of the Hon'ble Allahabad High Court

The Hon'ble Allahabad High Court held that penalty proceedings under Section 271AAC of the Act cannot be initiated based on a protective assessment order. It directed that no final order imposing penalty should be passed until the appeal before the Ld. CIT(A) is decided. Further, the Hon'ble Allahabad High Court noted that the Assessee has not filed any response to the penalty notice. The Hon'ble Court held that the Assessee should be granted the right to approach the Tax Authorities and file a detailed reply along with documents to the notice under Section 271AAC of the Act.

[10] 2014 LawSuit (Guj) 1017

7. ***Hon'ble Mumbai ITAT[11]:*** *Held that premium on redemption of debenture at maturity is taxable as interest under the head income from other sources*

Background

Khushaal C. Thackersey ('the Assessee') redeemed 0% non-convertible debentures ('NCDs') during AY 2010-11 and offered the premium earned (being difference between maturity proceeds and purchase cost) as long-term capital gains. Further, the Assessee claimed exemption under Section 54F and 54EC of the Act against such long-term capital gains.

The AO rejected the exemption claimed under Section 54F of the Act on the ground that the Assessee has not received the possession of the flat within the prescribed period of 3 years. The Assessee filed an appeal before the CIT(A) against the said assessment order. The CIT(A) held that redemption of NCDs will not result in long-term capital gains but the surplus between the premium received on maturity and face value, shall be classified as interest income and shall be chargeable to tax under the head income from other sources.

Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT upheld the order of the CIT(A) that debenture is a debt instrument and redemption of such debenture is same as realization of money advance by a creditor. Accordingly, premium received is nothing but accumulated interest on debenture that cannot be characterized as capital gains but shall be classified as interest income and taxed under the head income from other sources.

However, the Hon'ble ITAT observed that the Assessee has purchased aforesaid debenture and accordingly, difference between maturity proceeds and purchase cost shall be chargeable to tax and not the difference between maturity proceeds and face value of debentures.

[11] Khushaal C. Thackersey [TS-293-ITAT-2024] (MUM)

8. ***Hon'ble Hyderabad ITAT[12]:*** *Penalty order for 'misreporting' of income unjustified when notice is for 'under-reporting'*

Background

Shri Mohd. Sarwar ('the Assessee') filed an original return of income for the AY 2018-19 on 12.07.2018 declaring total Income of Rs 14.34 Lakhs. Subsequently, a revised return was filed by the Assessee for the AY 2018-19 declaring the reduced total income to Rs. 6.47 Lakh. The Tax Authorities noticed that the total TDS claimed as per the revised return was Rs.2.65 Lakh as against claim of Rs. 2.50 Lakh in the original return. Hence, a notice under Section 142(1) of the Act was issued.

During the assessment proceedings, the Assessee contended that the revised return of income was filed without his knowledge. Consequently, the Assessee submitted another revised computation of income, declaring a total income of Rs. 14.84 lakh. Further, the Assessee furnished reasons for discrepancies between the previously filed returns. The Tax Authorities contended that the revised tax return, which claimed a substantial refund, was filed within the Assessee's knowledge and thus considered Rs. 8.38 Lakhs (Rs. 14.84 Lakhs less Rs. 6.47 Lakhs) as under-reported income. The Assessee agreed to the proposed modification in response to the SCN. The Tax Authorities computed the total income at Rs. 14.84 Lakhs considering the addition of Rs. 8.38 Lakhs in the nature of under-reported income, and completed the assessment under Section 143(3) r.w.s. Section 143(3A) and Section 143(3B) of the Act.

Subsequently, a show-cause notice was issued to the Assessee, as to why an order imposing a penalty under Section 270A of the Act in case of under-reporting should not be passed. However, the order levying a penalty under Section 270A was passed on the ground of 'misreporting of income' instead of 'under-reporting of income'. In response, the Assessee filed an appeal before the Hon'ble CIT(A).

The Ld. CIT(A) dismissed the appeal of the Assessee. Aggrieved by the CIT(A) order, the Assessee filed an appeal before the Hon'ble Hyderabad ITAT.

The Assessee contended that penalty proceedings were initiated on the ground of under-reporting of income. However, the impugned penalty order issued under Section 270A of the Act stated the basis of levy of penalty on the ground of mis-reporting of income. Accordingly, the Ld. AO imposed penalty at 200% instead of 50% of the amount of tax payable on under-reported income. Further, the notice of demand under Section 156 of the Act dated 21.01.2022 was issued prior to the date of penalty order under Section 270A of the Act (viz. 22.01.2022) which is in

[12] Mohd. Sarwar [TS-260-ITAT-2024] (HYD)

contravention to the provisions of Section 156(1) of the Act. Accordingly, the notice of demand under Section 156 is null and void as well as against the principles of natural justice. Hence, the impugned notice of demand needs to be quashed.

Per Contra, the Tax Authorities contended that revised return filed was within the knowledge of the Assessee since it was under his Name, PAN, and the bank account in which the refund was credited to the Assessee. Further, the Tax Authorities contended that the Assessee had made an attempt to reduce his tax liability by concealment of particulars of true income and that the Assessee had clearly reduced his taxable income to claim excessive refund.

Decision of Hon'ble Hyderabad ITAT

The Hon'ble Hyderabad ITAT noted that the assessment order and notice of penalty clearly indicated under-reporting of income by the Assessee. Since the Assessee admitted under-reporting of income, which was also accepted by the Ld. AO, the penalty should have been levied only on account of under reporting of income and not for mis-reporting of income.

Accordingly, it directed the Ld. AO to revise the demand of penalty by taking the violation as under-reporting of income under Section 270A of the Act. Hence, the applicable rate should be considered for levying penalty in respect of under-reporting of income. The Hon'ble Hyderabad ITAT has partially allowed the appeal of the Assessee.

9. ***Hon'ble Chennai ITAT[13]:*** *Application for renewal of recognition under Section 80G of the Act in Form No. 10AB filed by an existing trust before 30.09.2023 is within timelimit*

Background

Teddy Trust ('the Assessee') was incorporated on 04.11.1992 and it commenced its activities on 17.01.1992. The Assessee was given provisional approval in Form No. 10AC under Section 80G(5)(iv) of the Act for the period commencing from 21.10.2022 to AY 2025-26. Assessee filed an application in Form No. 10AB on 30.03.2023 seeking registration under clause (iii) of first proviso to sub-Section (5) of Section 80G of the Act. However, the Ld. CIT(E) rejected the application of the Assessee considering it as time barred.

Aggrieved by the order passed by the Ld. CIT(E), the Assessee filed an appeal before the Hon'ble Chennai ITAT.

The Tax Authorities contended that the Assessee was required to file the renewal application at least six months prior to expiry of the provisional approval or within six months from the commencement of its activities, whichever is earlier in accordance with the sub-clause (iii) of the first proviso to Section 80G(5) of the Act.

Also, the Tax Authorities contended that since the Assessee was an old trust continuing to exist before the commencement of new regime, it should have made the application under Section 80G(5)(i) itself in Form No. 10A rather than an erroneous application made under Section 80G(5)(iv) of the Act to obtain provisional registration in Form No. 10AB.

Under new regime, the Hon'ble CBDT on multiple occasions has extended time limit for filing the application in Form No. 10A and / or Form 10AB. As per latest circular, due date for filing application in Form No. 10AB was extended till 30.09.2023 only in respect of trust/ institutions registered under Section 10(23C) and Section 12AB of the Act. However, the said Circular did not mention any such extension of due date for filing Form No.10AB to get approval under Section 80G of the Act. Accordingly, the due date of 30.09.2023 would not be applicable to the trusts listed under Section 80G(2)(a)(iv) of the Act. Therefore, the application of the Assessee was treated as time barred and rejected as non-maintainable.

Decision of Hon'ble Chennai ITAT

The Hon'ble Chennai ITAT noted the fact that Assessee is an old trust which has commenced its activities from 1992 and it has made application for renewal of registration in Form No. 10AB on 30.03.2023.

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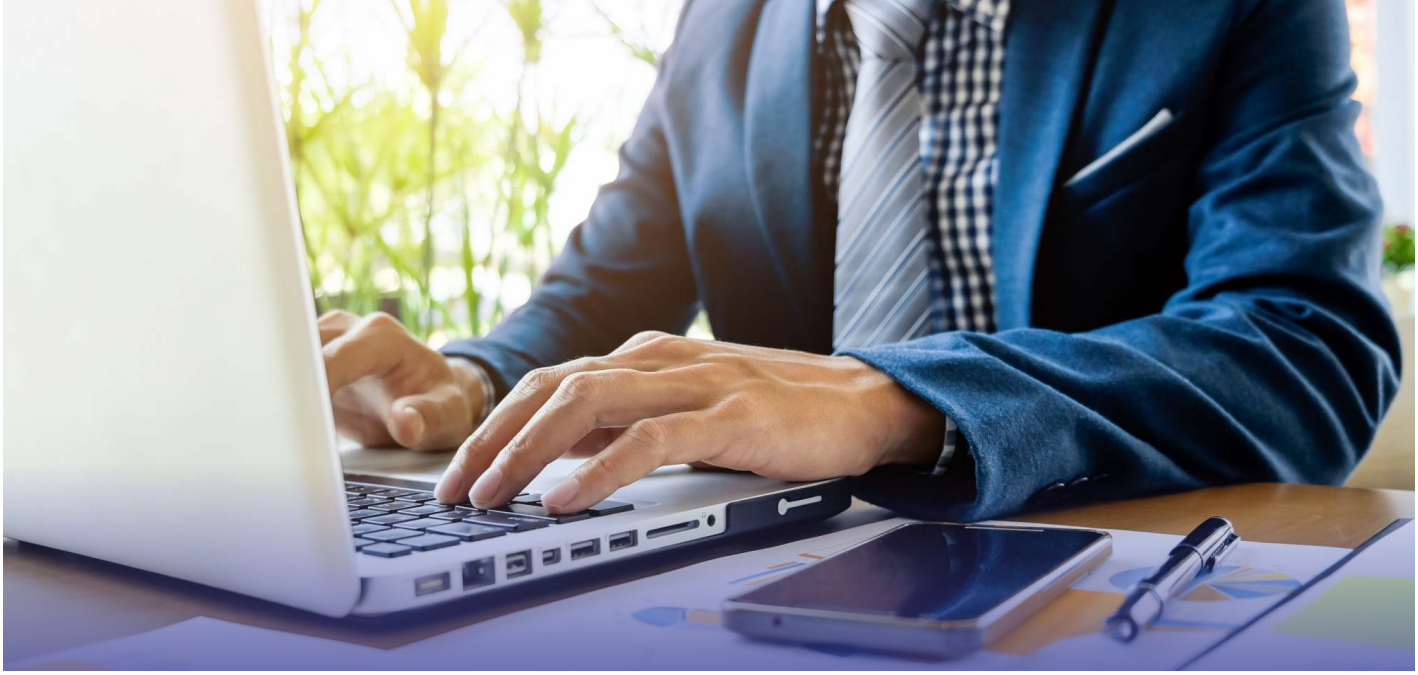
[13] Teddy Trust vs CIT [TS-267-ITAT-2024](CHNY)



The Hon'ble Chennai ITAT followed the decision of co-ordinate bench in case of CIT-1982 Charitable Trust & Ors[14] (CIT-1982) wherein it was held that time-limit extended to 30.09.2023 by Hon'ble CBDT vide Circular No. 6/2023 dated 24.05.2023 should also apply to Form No. 10AB for renewal of approval / recognition / registration under clause (iii) of first proviso to Section 80G of the Act and that the time-limit stipulated therein is directory and not mandatory. Accordingly, the Hon'ble Chennai ITAT has set aside the order of the Ld. CIT(E) passed in case of (CIT-1982), remanded the matter back to CIT(E) to decide the matter on merits and allowed the appeal of CIT-1982 for statistical purpose.

The Hon'ble Chennai ITAT also placed reliance on judgment of Hon'ble Madras High Court in the case of Sri Nrisimha Priya Charitable Trust[15] (SNPCT) wherein it was held that clause 5(ii) of the Circular No. 6 of 2023 dated 24.05.2024 is illegitimate, arbitrary and ultra vires the Constitution of India as the said clause extended time to file Form 10AB in respect of clause (iii) of first proviso to Section 10(23C) as well as Section 12(1)(ac) of the Act, but not in respect of application made under clause (iii) of first proviso to Section 80G of the Act. Therefore, the Hon'ble Madras High Court directed the Tax Authorities to consider the application submitted by SNPCT as to recognition / approval as per clause (i) of first proviso to Section 80G(5) of the Act as within time and pass order on merits.

Based on the above judicial precedents, the Hon'ble Chennai ITAT set aside the impugned order and directed the Ld. CIT(E) to consider the application of the Assessee on merits without raising the issue of timeline.

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[14] ITA No. 827/Chny/2023 order dated 08.03.2024

[15] WP Nos. 27030 & ors. of 2024 order dated 02.04.2024

B. International Tax

1. *Hon'ble Mumbai ITAT[16]: Portion of salary expense of expatriate employee rendering service in Indian branch of foreign bank not reflected in financial accounts of Indian branches cannot be treated as head office expenses under Section 44C. NRI mobilization expenses cannot be considered as a head office expense since it is not covered by Section 44C*

Background

A. Deduction in respect of Offshore Salary paid to expat employees

Some expatriate employees of the HSBC group were deputed to India for rendering services to the Indian branch of the group. These employees were receiving the salary in India (onshore salary) as well as in overseas country (offshore salary). Since they were deputed from overseas, offshore salary was not reflected in the financial statements of the Indian branch of the Group. However, since these costs were incurred wholly and exclusively for the business of the Indian branch (HSBC Limited – the Assessee), the same was claimed as deduction under Section 37 of the Act in the ROI by the Assessee for the AY 2005-06. The onshore salaries paid in India were chargeable to tax in India and due income tax on such salary was paid to the Government Treasury.

During the assessment proceedings, the Ld. AO held that portion of offshore salary paid by the overseas branch cannot be allowed as a deduction under Section 37 of the Act. However, such offshore salary shall be considered as part of head office expenditure as defined in Section 44C of the Act. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) held that offshore salary paid to expatriate employees could not be considered as head office expenses, as it is not covered by Section 44C(iv)(b) of the Act (based on favourable judgments in Assessee's own case from AY 1992-93 to AY 2003-04). Further, the CIT(A) opined that offshore salary paid to expatriate employees shall be allowed as expenditure fully under Section 37 of the Act since it is related to Indian operations of the Assessee. Aggrieved by the order of Ld. CIT(A), the Tax Authorities filed an appeal before the Hon'ble Mumbai ITAT.

B. Deduction in respect of NRI mobilization expenses

The Assessee has claimed NRI mobilization expense amounting to INR 8.88 Crores during the AY 2005-06. The NRI mobilization expenses are with respect to

[16] HSBC Ltd Vs. JDIT [2024] 162 taxmann.com 358 (Mumbai-Trib.)

activities exclusively related to the marketing for NRI deposits and to provide personalized and expert service to the NRIs. The expenses incurred toward the NRI desks are in the nature of salaries, travelling, advertising and other incidental expenses.

The NRI mobilization expenses are debited by overseas branch to Assessee's head office in Hong Kong. The Assessee claimed that the expenditure has been incurred wholly and exclusively for the purpose of business of the Assessee's Indian operations. The Assessee has benefitted from the NRI deposits collected and income generated from NRI deposits forms part of taxable income of the Assessee. The expenditure that has been incurred in earning such income should be fully deducted when arriving at the taxable income.

During the assessment proceedings, the Ld. AO contended that NRI mobilization expense should be considered as part of head office expense and hence, such expense should be allowed under Section 44C of the Act. No deduction under Section 37 of the Act was allowed in respect of NRI mobilization expense. On appeal by the Assessee, the Ld. CIT(A) directed the Ld. AO to allow the expenditure fully since it is related to Indian operations of the Assessee and following the decision of Hon'ble Mumbai ITAT in Assessee's own case from AY 1992-93 to AY 2003-04 and judgment of Hon'ble Bombay High Court for AY 2000-01. Aggrieved by the order of Ld. CIT(A), the Tax Authorities filed an appeal before Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

A. Deduction in respect of Offshore Salary paid to expat employees

The Hon'ble Mumbai ITAT took cognizance of details of expatriate employees filed in submissions – viz. details of designation and remuneration of expatriate employees, their Form 16, return of income, copy of secondment letters / posting letters, etc. It also observed that the issue of allowability of offshore salary as deduction by the Assessee for period from AY 1992-93 to AY 2003-04 has been

decided in favour of the Assessee in the earlier appeal to Hon'ble Mumbai ITAT.

Further, the Hon'ble Mumbai ITAT observed that expatriate employees were deputed to the Assessee by the HSBC Group and they were working exclusively for the Assessee. The Hon'ble Mumbai ITAT noted that the offshore salary paid to these expatriate employees by the overseas branch was an expenditure incurred exclusively for the Assessee. Further, such offshore salary is not a part of head office cost but a direct cost of Indian branch (Assessee) and cannot be covered by Section 44C of the Act.

Therefore, the Hon'ble Mumbai ITAT held that such offshore salary costs should be allowed as deduction.

B. Deduction in respect of NRI Mobilization Expense

The Hon'ble ITAT observed that the expenditure is incurred specifically for mobilization of deposits of the Indian branch of the Assessee and rendering related services to customers. This expense is neither in the nature of general administration expenses nor common expenditures allocable to the branches. The expenses incurred and the benefit derived is directly attributable to the Assessee and accordingly, such expenditure cannot be covered under Section 44C of the Act. Further, the Assessee has also furnished the details of expenditure incurred which is duly supported by independent accountants' certificates and expenses statement.

The Hon'ble ITAT relying on past year's ITAT judgement in Assessee's own case, observed that objections raised on the deduction of the expenditure is devoid of legally sustainable reasons. The provision of Section 44C of the Act will hit only such expenditure which are not being capable of allocation to any particular profit centre and which are required to be allocated on general basis. The expenses on mobilization of NRI deposit does not fall in this category because these expenses are for the purpose of India specific operations where NRI deposits are relevant and therefore cannot be allocated to operations in other countries or to the head office.

Further, the Hon'ble Mumbai ITAT noted that judgment of Hon'ble Bombay High Court for AY 2000-01 on this ground came in favour of the Assessee has attained the finality as the Tax Authorities have not challenged order passed by Hon'ble Mumbai ITAT for earlier years.

II. Transfer Pricing

1. ***Hon'ble Supreme Court[17]:*** *Companies earning revenue from software development services as well as sale of software products about which segmental information is not available could not be accepted as comparables to Assessee rendering software development services to AE.*

Background

Microsoft India (R and D) (P.) Ltd ('Assessee') is engaged in the business of rendering software development services and Information Technology Enabled Services ('ITES') services. The Assessee is a subsidiary of Microsoft Ireland Research Ltd and ultimate parent company being Microsoft Corporation, USA ('AE'). During the AY 2011-12 and AY 2012-13, the Assessee entered into international transactions with its AE and earned cost plus 15% as compensation for such services from AE. The Assessee benchmarked the international transaction with AE using TNMM as the most appropriate method with operating margin (OP/OC) of 14.34% vis-à-vis margin of 9.50 % of comparable companies.

The Assessee benchmarked the international transaction as Software development services primarily including two things, viz., Contract software development services and Internal information technology support. The Assessee contended that it has a limited input into the design of the product and all the bulk operations were undertaken by the AE.

The case of the Assessee was selected for scrutiny and was referred to the TPO. However, the Ld. TPO held that the Assessee was not a routine software developer but was engaged in rendering high quality software engineering services to its AE and positively contributed to ultimate products developed and released by the AE.

[17] Microsoft India (R and D) (P.) (Ltd) [2024] 161 taxmann.com 770 (SC)

Accordingly, the TPO held that the margin of 15% earned by the Assessee was not at ALP as the AE, receiving services and accordingly rejected Assessee's search of comparable companies. The Ld. TPO made an independent search wherein M/s Persistent Systems was retained and three new companies, namely, Infosys Technologies, E-Infochips Bangalore and Wipro Technology Services Ltd were chosen.

The Ld. TPO proposed an addition of INR 2,01,21,96,582 towards Software development services and Rs. 39,67,65,085 towards provision of IT enabled services. On raising objections before the DRP, the DRP issued directions for recalculating the comparables margins and accordingly, the Ld. TPO made an addition of INR 197,23,68,765.

The Assessee filed appeal before the Hon'ble Delhi ITAT. During the appeal proceedings, the Assessee stated that profit of the aforesaid three comparables, i.e M/s Persistent Systems, Infosys Technologies and Wipro Technology Services were derived from both software development services as well as software products. Further, there is no precise information about the contribution of the income derived from the sale of software to the total income of the companies. In the absence of segmental information provided by the companies in respect of the software services, the companies should be excluded from the list of the comparables. Further, the Hon'ble Delhi ITAT observed that M/s Wipro Technology Services also falls under the definition of related party due to its structure of agreement between Assessee 's AE, Wipro Ltd., and Citigroup Inc. Hence, M/s. Wipro Technology Services gets disqualified to become a comparable as per rule 10B(1)(e)(ii) of the Rules. Accordingly, the Hon'ble Delhi ITAT rejected the inclusion of the 3 companies in the list of final comparables for benchmarking transaction.

Aggrieved by the impugned order of the Hon'ble Delhi ITAT, the Assessee and Tax Authorities have filed cross appeals. The Hon'ble Delhi High Court held that since the non-availability of segmental data is a finding of fact not disputed by the Tax Authorities, the decision pronounced by the Hon'ble Delhi ITAT was upheld by the Hon'ble Delhi High Court.

Aggrieved by the order of Hon'ble Delhi High Court, the Tax Authorities filed an appeal before Hon'ble Supreme Court.

Judgement of Hon'ble Supreme Court

The Hon'ble Supreme Court disposed of the SLP in the favour of the Assessee by relying on its earlier decision in the case of PCIT v. Microsoft India (R and D) (P.) Ltd[18] [SLP (C) No. 13198 of 2023, decided on 3-7-2023].

[18] Microsoft India (R and D) (P.) (Ltd) [2024] 153 taxmann.com 200 (SC)

2. ***Hon'ble Delhi ITAT[19]:*** *Rejected AO's contention to allocate the cost based on 'salary expense ratio' from 'headcount', which is consistently used by Assessee and accepted by Ld. TPO*

Background

Genpact Services LLC ('the Assessee') is an Indian branch office of Genpact LLC, a USA Company. The Assessee is rendering various off-shore support services akin to BPO services, including collections/analytics, call center services and other back-office support services to its AE. For AY 2017-18, the Assessee has availed various support services in the nature of technology, communication and facility, management and support (such as finance, human resource) etc. to function efficiently. It has availed such services from Genpact India Pvt Ltd ("AE") for which it paid support services fee to its AE. Such support service fee was allocated to the Assessee based on appropriate allocation keys which is a consistently accepted by the Tax Authorities from AY 2012-13.

Vide Transfer Pricing Order, the Ld. TPO accepted the 'headcount' allocation key for provision of support service. However, while concluding the assessment, the Ld. AO has rejected the cost allocation on 'headcount' basis and reallocated the cost based on 'Salary expense ratio', thereby disallowing support service cost under Section 37 of the Act. Also, the Ld. AO was of the view that there was a distinction during the year under consideration, due to the survey proceedings, which brought certain fresh development leading to a divergent stand. The said assessment order of the Ld. AO was affirmed by Dispute Resolution Panel ('DRP'). Accordingly, the Assessee filed an appeal before Hon'ble Delhi ITAT.

[19] Genpact Services LLC v. ACIT [2024] 161 taxmann.com 765 (Delhi)(Trib.)

Decision of Hon'ble Delhi ITAT

The Hon'ble Delhi ITAT observed that entire set of documents in support of the workings of the cost allocations were duly furnished before the survey team and no defect was pointed out in the said workings by the survey team. The Hon'ble ITAT also noted that the reference under Section 92CA(1) of the Act to the Ld. TPO was made by the Ld. AO after the survey proceedings. Hence, it is evident that the findings of the survey team were available before the Ld. TPO.

Accordingly, the Hon'ble Delhi ITAT held that the cost allocation key on 'headcount basis' has been duly examined and accepted by the Ld. TPO to be at ALP in the TP proceedings under Section 92CA(3) of the Act. The same cannot be subjected to retest by the Ld. AO under the garb of examining the same in the context of allowability of deduction under Section 37 of the Act. It was held by the Hon'ble ITAT that the cost allocation on the basis of "headcount" has been affirmed to be an appropriate allocation key by the Hon'ble jurisdictional High Court in the case of CIT v. EHPT India Private Limited[20]. Therefore, the Hon'ble Delhi ITAT held that the cost allocation key on the basis of 'headcount' should not be disturbed for the year under consideration following the principle of consistency.

3. *Hon'ble Delhi ITAT[21]: In the absence of 'existence of an arrangement', provisions of Section 80IA(10) cannot be triggered. Business transacted between eligible units and its AE will not get covered within ambit of SDTs defined under Section 92BA and eventual TP analysis in case of no arrangement.*

Background

Mankind Pharma Ltd ('the Assessee') is engaged in the business of manufacturing of pharmaceutical and healthcare products. The Assessee has three manufacturing units at Paonta Sahib- Himachal Pradesh, namely Unit-I, Unit-II and Unit-III. Out of the three units, Unit-II and Unit-III are eligible for deduction under Section 80-IC of the Act. Unit-I is not eligible for any beneficial treatment or deduction. The Assessee has another manufacturing unit situated in Sikkim, which is eligible for deduction under Section 80- IE of the Act.

For the AY 2018-19, the case of the Assessee was selected for scrutiny and the matter was referred to the TPO as per Section 92BA r.w.s 80IA(8) & 80IA(10) of the Act for computing ALP in respect of SDTs towards purchase and sale transactions

[20] CIT v. EHPT India (P.) Ltd. [2011] 16 taxmann.com 305/[2012] 246 CTR 217/[2013] 350 ITR 41/[2012] 204Taxman 639 (Delhi)
[21] Mankind Pharma Ltd [2024] 162 taxmann.com 235 (Delhi - Trib.)

entered between the eligible units claiming deduction under Section 80IC/80IE of the Act and other AEs of the Assessee.

The Assessee did not separately benchmark the SDTs between eligible units and its AEs. It benchmarked all entity level transactions (combining all units) and compared it with the operating margins of other comparable companies. Accordingly, in the TPSR all the transactions were benchmarked at TNM Method with entity margin at 19.11% (OP/OR) of the Assessee as compared to the median of the comparable companies' margin at 8.72%.

The Ld. TPO conducted fresh search of comparable companies and determined margin at 11.33% as median of comparable companies' visa-vis the margin of eligible Unit II at 14.91%; Unit III at 38.33%; Sikkim Unit at 33.61% and Non-eligible Unit I at 5.76% (as reported by the Assessee). The TPO alleged that since the eligible units have earned higher profits then non-eligible units, the Assessee's business model has been designed in such a way so as to allocate more profits to the eligible unit and thereby shifting profits from non- eligible unit of Assessee and AE to its eligible units. The Ld. TPO thus concluded that the Assessee has erroneously claimed higher deduction under Section 80IC/80IE and made an adjustment of Rs. 64,34,78,261/- under Section 80IA(10) of the Act.

On receipt of the draft order, the Assessee filed its objections before the Hon'ble DRP. The DRP issued its directions and upheld the view of the TPO about the existence of an arrangement between the Assessee and AEs to shift profit to the eligible units in order to claim higher deductions. However, as per DRP directions, the TPO reduced the proposed adjustment from Rs. 64,34,78,261/- to Rs. 21,92,40,676/-. The Ld. AO passed the final assessment order and confirmed the disallowance regarding the TP Adjustment under Section 80IA(10) of the Act at Rs. 21,92,40,676/-.

Aggrieved by the adjustments made to the returned income, the Assessee filed an appeal before the Hon'ble Delhi ITAT. The Assessee has also submitted certain additional evidences under Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 before the Hon'ble Delhi ITAT.

Decision of Hon'ble Delhi ITAT

After perusal of the additional evidence filed by the Assessee, the ITAT observed that there was no material departure in the transaction price of the transaction entered between eligible unit and AE in comparison to the transaction price of Eligible unit/AE with any unrelated third party, i.e. (Internal CUP). The Hon'ble Delhi ITAT admitted the additional evidences filed by the Assessee.

The Hon'ble ITAT observed that the legal position for applicability of Section 80IA(10) is the existence of 'arrangement' between the eligible unit and AEs which holds the key and is a condition precedent to trigger the provisions of Section 80IA(10). In the absence of any arrangement, the business transacted between eligible units and its AE do not get covered within the ambit of SDTs defined under Section 92BA of the Act and eventually TP analysis.

Further, the Assessee contended that the Ld. TPO / DRP proceeded on mere hypothesis rather than factual existence of arrangement between eligible unit and AE thereby causing substantial injustice.

After perusing the bills and details submitted by the Assessee, the Hon'ble ITAT held that rigours of Section 80IA(10) would not be applicable in a case where neither the Ld. AO has discharged the onus to establish existence of arrangement nor such arrangement is demonstrable on factual analysis. The findings of the Ld. TPO/AO holding existence of arrangement between the eligible units and AEs merely on the basis of higher operating profits of the eligible units cannot be upheld on first principles in the case of Assessee.

Accordingly, the Hon'ble Delhi ITAT remitted the matter back to the Ld. AO and granted the liberty to Ld. AO to verify the correctness of claim of the Assessee that transactions by the eligible units with its AE are at ordinary and comparable market price to justify ALP.

The AO was directed to pass a reasoned order towards presence of 'arrangement' as per Section 80IA(10), if any while determining the issue. The Ld. AO may make a reference to Ld. TPO for determination of ALP of the controlled transactions as per CUP method in the event the prima facie existence of 'arrangement' is discovered by him in the factual matrix.

4. ***Hon'ble Mumbai ITAT[22]:*** *Deleted penalty levied under Section 271(1)(c) of the Act on grounds of inaccurate particulars leading to concealment of income when Assessee gave justified explanations and reasons for not charging interest on loan given to AE.*

Background

Air Works India (Engineering) (P.) Ltd ('the Assessee') is engaged in the business of providing aviation services to scheduled airlines, business and people who own or operate aircraft as well as to the country's defense services. The case was selected for scrutiny for the AY 2009-10 and AY 2010-11 where the matter was referred to the TPO to determine the international transaction with AE of the Assessee. During the course of assessment proceedings, the Ld. AO and TPO observed from the TP Audit Report that Assessee has advanced loan to its subsidiary AE in Mauritius and part repayment of such loan was also made by its Mauritius AE.

The TPO observed that Assessee has disclosed all the particulars of income including ALP of interest in the TP study report, by claiming that no interest is chargeable on this transaction. The Assessee stated that the entire working capital loan was extended by the Assessee out of its own funds and no loan was raised to extend the interest free working capital loans to the AE. Further, the transaction is in the nature of the investment in the form of equity/quasi equity. The Assessee stated that the investment is made in the AE as start-up investments so as to promote the business sales in the Asian region. Assessee contended that when no interest is charged and the lending is out of owned funds, the loan transaction has no bearing

[22] Air Works India (Engineering) (P.) Ltd [2024] 162 taxmann.com 464 (Mumbai - Trib.)

on the profit of the Assessee and therefore Section 90B of the Act is not triggered. Accordingly, the loan transaction alone cannot be an international transaction unless it has bearing on the profits of the enterprise.

During the quantum proceedings, the addition in respect of interest on loan advanced to AE was restricted from initial addition at the rate of 11.96% to LIBOR + 300 basis points. Accordingly, the amount of addition was also reduced.

The AO levied penalty in respect of the quantum addition on the Assessee under Section 271(1)(c) of the Act on the grounds of both furnishing inaccurate particulars and concealment of income for both the AYs – AY 2009-10 and AY 2010-11 which has also been confirmed by the CIT(A).

Aggrieved by the order passed by the CIT(A), the Assessee filed an appeal before Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

During the appeal proceedings, the Tax Authorities contended that Explanation 7 to Section 271(1)(c) of the Act makes it very clear that if adjustment is made by TPO then it is deemed to be the case of either concealment of income or furnishing of inaccurate particulars of income. The Assessee has not charged the interest on loan advanced to its AE. However, the TP adjustment on account of interest has been confirmed by applying LIBOR + 300 bps. Hence, the order of CIT(A) should be upheld.

However, the Hon'ble Mumbai ITAT agreed with the contention of the Assessee that the entire working capital loan was extended out of own funds and the investments was in the form of equity / quasi-equity so as to promote business sales in Asian region. It noted that the Assessee has disclosed all the particulars of income including ALP of interest in the TP study report, by claiming that no interest is chargeable on this transaction.

The Hon'ble ITAT held that as the investments were made in the form of equity / quasi equity, charging of interest will not be required even under TP provisions. It held that despite the extent of the investment in equity / quasi equity has not been elaborated, the contention of the Assessee that the capital loan was given out of its own funds is justified, then invoking explanation 7 to Section 271(1)(c) of the Act is not bonafide and concluded that Assessee has not furnished any inaccurate particulars of income. Accordingly, it allowed the Assessee's appeal and deleted the penalty levied by the Ld. AO for both the years.

III. Important Circulars and Notifications

1. Hon'ble CBDT issued guidelines[23] for compulsory selection of returns for Complete Scrutiny during the FY 2024-25.

1. Parameters and Procedure for compulsory selection for complete scrutiny are as follows:

Sr. No.	Parameter	Procedure for compulsory selection
01	**Cases pertains to survey under Section 133A of the Act**	
	Assessment related to survey under Section 133A of the Act excluding survey under Section 133A(2A) leading to detection of specific materials	Cases to be selected for scrutiny with prior approval of the Pr. CIT/Pr. DIT/CIT/DIT, ensuring that cases are transferred to Central Charges within 15 days of service of notice under Section 143(2) of the Act by the JAO.
02	**Cases pertains to search and seizure**	
	Search and seizure prior to 01.04.2021: Assessment made under Section 153C r.w.s.143(3) and also return filed for AY relevant to PY in which the search was conducted or the requisition was made	Cases to be selected for scrutiny with prior approval of the Pr. CIT/Pr. DIT/CIT/DIT, ensuring that cases are transferred to central charges within 15 days after the service of notice under Section 143(2) / 142(1) of the Act by the JAO. Where cases are not centralized then if, i. Return of income is filed in response to notice under Section 153C of the Act then service of notice by JAO under Section 143(2) of the Act ii. Return of income is not filed in response to notice under Section 153C of the Act then issuance of notice by JAO under Section 142(1) of the Act

[23] CBDT issued guidelines dated 03.05.2024 - F. No. 225/72/2024/ITA-II

Sr. No.	Parameter	Procedure for compulsory selection
	Search and seizure on or after the 01.04.2021: Assessment in search and seizure cases under Section 132/132A after 01.04.2021	Cases to be selected for scrutiny with prior approval of the Pr. CIT/Pr. DIT/CIT/DIT, ensuring that cases are transferred to central charges within 15 days of service of notice in response to notice under Section 143(2) or 142(1) of the Act by the JAO
03	**Cases in which notices under Section 142(1) Calling for return and no return furnished**	JAO shall upload the documents on basis of which notice under Section 142(1) of the Act was issued by ITBA for access by NaFAC. The Directorate of Income-tax (Systems) shall forward these cases to NaFAC for further action.
04	**Cases when notice issued under Section 148 of the Act**	
	Cases where return is either furnished or not furnished in response to notice under Section 148 of the Act	**A. Cases where notices under Section 148 of the Act issued pursuant to search and seizure on or after 01.04.2021:** Cases to be selected for scrutiny with prior approval of the Pr. CIT/Pr. DIT/CIT/DIT, ensuring that cases are transferred to central charges within 15 days of service of notice under Section 143(2) / 142(1) of the Act by the JAO. **B. Cases other than Search and Seizure:** Cases which are to be completed by NaFAC on or before 31.03.2025, JAO shall upload the documents. These cases shall be forwarded by the Directorate of Income-tax (Systems) to NaFAC
05	**Cases related to registration/ approval under various sections of the Act, such as 12A, 12AB, 35(1)(ii)/ (iia)/ (iii), 10(23C)(iv)/(v)/(vi)/(via)**	
	Cases where registration/ approval under the above sections have not been granted or have been cancelled / withdrawn by Competent Authority, yet Assessee is taking tax exemption / deduction in the return. However, where such order of withdrawal of registration have been kept aside in appellant proceeding will not be selected under this clause	JAO shall prepare a list of such cases with prior approval of Pr.CIT/Pr.DIT/ CIT/DIT. The consolidated list shall be forwarded to Pr.CCIT by Pr.CIT/Pr.DIT/CIT/DIT. The Pr. CCIT shall forward it to Directorate of Income-tax (Systems). Notice under Section 143(2) of the Act shall be served through NaFAC and JAO shall upload the documents regarding this parameter immediately.

Sr. No.	Parameter	Procedure for compulsory selection
06	**Cases Involving addition in an earlier assessment year on a recurring issue of law or fact and/or law and fact**	
	Where the addition in an earlier A.Y. on recurring issue of law or fact (including TP issue) a. Exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Mumbai, Hyderabad, Kolkata, Delhi and Pune b. Exceeding Rs. 10 Lakhs in charges other than eight metro charges And where such an addition : a. Has become final, as no further appeal preferred against the assessment order b. Had been upheld by the appellant authorities in favors of Revenue even if further appeal of Assessee is pending against such order	JAO shall prepare a list of cases with prior approval of Pr.CIT/Pr.DIT/ CIT/DIT. The consolidated list of such cases shall be forwarded to Pr.CCIT by Pr.CIT / Pr.DIT/ CIT/ DIT. The Pr. CCIT shall forward this list of cases to Directorate of Income-tax (Systems). Notice under Section 143(2) of the Act shall be served through NaFAC and JAO shall upload the documents regarding this parameter immediately.
07	**Cases related to specific information regarding tax-evasion**	
	Cases, in respect of which: (A) Specific information pointing out tax-evasion for the relevant AY is provided by any law-enforcement agency (Investigation Wing / Intelligence / Regulatory Authority / Agency, etc.); and (B) The return for the relevant AY is furnished by the Assessee	JAO shall prepare a list of cases with prior approval of Pr.CIT/Pr.DIT/ CIT/DIT. The consolidated list of such cases shall be forwarded to Pr.CCIT by Pr.CIT / Pr.DIT / CIT / DIT. The Pr. CCIT shall forward this list of cases to Directorate of Income-tax (Systems). Notice issued under Section 143(2) of the Act through NaFAC and JAO shall upload the documents regarding this parameter immediately.

2. It is clarified that in a case where return has been furnished in response to notice under Section 142(1) of the Act and such notice was issued due to information contained in NMS Cycle / AIS/ SFT /CPC-TDS / Information from Directorate of I & CI, then such return will **not** be taken up for compulsory scrutiny. Selection of such cases will be done through CASS Cycle.

3. The cases shall be selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed parameters and procedures, with prior administrative approval from the Pr.CIT/Pr.DIT/CIT/DIT concerned. Information related to Compulsory Scrutiny may not be transferred to NaFAC unless the case itself is transferred. Further, it is clarified that communication with NaFAC for access and/or further action after selection for Compulsory Scrutiny will not apply to the International Taxation and Central Circle charges.

   3.1 Cases selected for compulsory scrutiny by International Taxation and Central Circle charges, as per the parameters in Para 1, will continue to be handled by the respective charges.

   3.2 During Search & Seizure actions, information about some other persons with one-off/ very few / limited transactions with the main Assessee may be found. Such persons are not closely linked to the main Assessee's core business and do not belong to same business group. Often such persons reside in different cities. In such cases, the relevant information is generally passed to the JAO for making assessment under Section 148 of the Act. These non-search cases are not required to be transferred to the Central Charges unless specified by the Board's guidelines under F.No. 299/107/2013-IT(Inv.III)/1568 dated 25.04.2014.

4. According to the Finance Act 2021, the time limit for serving notice under Section 143(2) of the Act has been reduced to three months from the end of the FY in which the return is filed. Hence, for the ROIs filed in the FY 2023-24, the deadline for serving notice under Section 143(2) of the Act is 30.06.2024.

   4.1 Accordingly, the following tirnelines shall be followed with regards to returns filed in the FY 2023-24:

Sr. No.	Action	Last Date
01	Selection and transfer of cases, for actions related to cases under Parameters at S.No.4(ii), 5, 6 and 7 of Para 2 above, wherein assessments have to be completed in faceless manner, to NaFAC.	**31.05.2024**
02	Service of Notice under Section 143(2) of the Act in cases selected for Compulsory Scrutiny	**30.06.2024**

2. The Hon'ble CBDT vide notification[24] inserted the CII for the F.Y. 2024-25

The Hon'ble CBDT has inserted the Cost Inflation Index for the FY 2024-25 as **363** for the purpose of computing indexed cost of acquisition in case of long-term capital gains.

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[24] CBDT Notification No.44/2024 dated 24.05.2024

IV. Compliance Calendar June 24

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Jun	June 2024	TDS / TCS Payment	Non-Government Deductors
02	15th Jun	F.Y. 2023-24	Form 16 – TDS on Salary Payments	All deductors
03	15th Jun	January 2024 to March 2024	Form 16A – TDS other than TDS on salary	All deductors
04	15th Jun	Qtr. 1 (F.Y 2024-25)	Advance tax payment	All Assessee
05	30th Jun	FY 2023-24	Equalization Levy Statement	All deductors
06	30th Jun	May 2024	Form 26QB (Section 194-IA), Form 26QC (Section 194-IB), Form 26QD (Section 194M), Form 26QE (Section 194S)	All Deductors

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Jun	May 2024	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Jun	May 2024	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Jun	May 2024	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2023-24 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2023-24 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Jun	May 2024	GSTR – 6 (ISD)	Person registered as ISD
05	13th Jun	May 2024	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
06	20th Jun	May 2024	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2023-24 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2023-24 and not opted for QRMP scheme
07	20th Jun	May 2024	GSTR - 5A (OIDAR)	OIDAR services provider
08	25th Jun	May 2024	GSTR – 6 (QRMP)	Applicable to the Assessee who has opted QRMP scheme.

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

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	15th Jun	May 2024	PF/ESIC Payment	All Assessee to whom respective laws of PF / ESIC are applicable
02	15th Jun	May 2024	ESIC Monthly Return	
03	25th Jun	May 2024	PF Monthly Return	

D. FEMA Compliance

Sr. No.	Due Dates	Particulars	Concerned (reporting) Period	Applicable to
01	7th Jun	ECB 2 Return (External Commercial Borrowing)	May 2024	All Indian Borrowers who have non-resident lenders
02	30th Jun	F.Y. 2023-24	Form DPT-3 – Return of Deposits	All companies (Excl. Government Companies)

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

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

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

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

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

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