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CHARTERED
ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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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
CbCR	Country by Country Reporting
CIT	Commissioner of Income-tax
CUP	Comparable Uncontrolled Price Method
CPC	Central Processing Centre
CCDs	Compulsory Convertible Debentures
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(IT)	Commissioner of Income-tax (International Taxation)
CIT(E)	Commissioner of Income-tax (Exemptions)
CBDT	Central Board of Direct Taxes
Cr	Crores
DDT	Dividend Distribution Tax
DVO	District Valuation Officer
DCIT	Deputy Commissioner of Income Tax
DTAA	Double Taxation Avoidance Agreement
DRP	Dispute Resolution Panel
ED	Enforcement Directorate
FY	Financial Year
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
HC	High Court
Hon'ble	Honorable
ITO	Income Tax Officer
ITR	Income Tax Return

ABBREVIATION	FULL FORM
ITAT	Income Tax Appellate Tribunal
JCIT	Joint Commissioner of Income Tax
LIBOR	London Inter-bank Offered Rate
Ld.	Learned
LLC	Limited Liability Corporation
MTM	Magnetic Tomography Method
MD	Managing Director
NFAC	National Faceless Assessment Center
OEM	Original equipment manufacturer
OCI	Overseas Citizen of India
PE	Permanent Establishment
PCIT	Principal Commissioner of Income Tax
PWD	Public Works Department
PY	Previous Year
Rules	Income-tax Rules,1962
RBI	Reserve Bank of India
ROI	Return of Income
SC	Supreme Court
SCN	Show Cause Notice
SEZ	Special Economic Zone
SEBI	Securities and Exchange Board of India
STP	Software Technology Park
TAN	Tax Deduction Account Number
TP	Transfer Pricing
TCS	Tax collected at source
TDS	Tax deducted at source
TRC	Tax Residency Certificate
TPO	Transfer Pricing Officer
TOLA	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020
WIP	Work In Progress

I. Direct & International Taxation

A. Corporate Tax

1. ***Hon'ble Supreme Court[1]:*** *TOLA survives post amendment of the Act based on substitution principle and upholds reassessment notice*

Background

Hon'ble Supreme Court has delivered a ruling in the case of ***Union of India vs Ashish Agarwal (2023) 1 SCC 617*** (hereinafter referred to as "Ashish Agarwal") wherein the Hon'ble Court has given the findings that reassessment notices issued under the old regime shall be deemed to have been issued under Section 148 A(b) of the new regime. However, the said ruling is silent on - Whether the notices issued for initiating reassessment after 1 April 2021 were within the time limits prescribed under the provisions of the Act read with relaxation provided under TOLA?

As the different High Courts have taken a view favorable to the taxpayers, the tax authorities filed an appeal before the Hon'ble Supreme Court wherein following issues were raised:

Issues before the Hon'ble Supreme Court:

a. Whether TOLA and notifications issued under it will also apply to reassessment notices issued after 1 April 2021; and

b. Whether the reassessment notices issued under Section 148 of the new regime, between July to September 2022, are valid.

Judgment of Hon'ble Supreme Court

Hon'ble Supreme Court has given the following findings considering the provisions of the Act, TOLA and Finance Act 2021:

[1] Rajeev Bansal[TS-725-SC-2024]

a. **The Income Tax Act has to be read along with the substituted provisions after 1 April 2021** – the Income tax Act has to be read along with substituted provisions after 1 April 2021. TOLA was in existence on 1 April 2021 and tax authorities could not have ignored the application of TOLA and its notifications.

   Thus, for issuing a reassessment notice after 1 April 2021, the tax authorities have to look into the time limit specified under Section 149 of the new regime as extended by TOLA and its notifications.

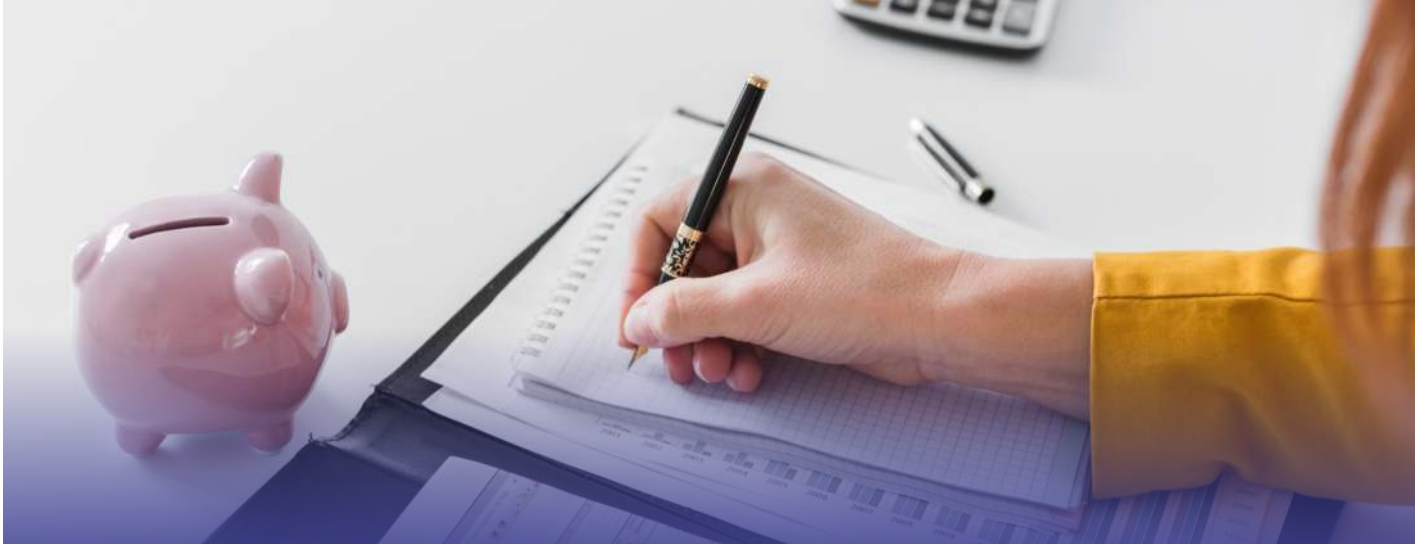
b. **If any action or compliance specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 to 31 March 2021, TOLA will continue to apply to the Income Tax Act after 1 April 2021** – Tax authorities have contended that Section 3(1) of the TOLA overrides the time limits for issuing the notice under Section 148 read with Section 149 of the Act. The Hon'ble SC held that TOLA didn't extend the life of the old regime but provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime.

   The Hon'ble Supreme Court held that while the TOLA cannot extend the operation of old law, but tax authorities can take benefit of extended timelines which falls for completion / compliance of action between 20 March 2020 to 31 March 2021.

   Further, Hon'ble Court has observed that, the Legislation has included non obstante clause in Section 3(1) of the TOLA so as to remove any obstacles which may come in the way of the operation of the time limit till 31 March 2021 or such other date after 31 March 2021 specified by the Central Government. Both the Assessee and tax authorities should get the full benefit of the relaxation to tide over the difficulties caused by the COVID-19 pandemic.

c. **The Section 3(1) of TOLA overrides Section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148** – Hon'ble Supreme Court held that the provisions of the Specified Acts including the provisions of the Act are controlled by the non obstante clause in Section 3(1) of the TOLA. In case of any direct conflict or inconsistency pertaining to the issuance of a reassessment notice, non obstante clause of Section 3(1) of the TOLA will override the provisions of the Income tax Act.

   TOLA has only extended or relaxed the time limits for issuance of reassessment notice under Section 148 of the Act. Therefore, time limits have been extended till 30 June 2021 for issuance of notice under Section 148 of the Act if the period is



between 20 March 2020 and 31 March 2021. However, TOLA has neither extended the time limit of three years under Section 149(1)(a) of the Act as per the new regime nor extended the time limit of six years under Section 149(1)(b) of the Act as per the old regime.

d. **TOLA will extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the Specified authority under Section 151(i) has extended time till 30 June 2021 to grant approval** – there is no time limit prescribed for the Specified authority to grant sanction under Section 151 as per the new regime.

   Specified authority under Section 151(i) of the Act has extended time to grant approval till 30 June 2021, if the time limit of three years as per the new regime falls between 20 March 2020 to 31 March 2021.

e. **In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the Specified authority under Section 151(2) has extended time till 31 March 2021 to grant approval** – The Hon'ble Supreme Court held that the Specified authority under Section 151(2) of the Act has extended time to grant approval till 31 March 2021 if the time limit of four years as per the old regime falls between 20 March 2020 to 31 March 2021. Since the new regime comes into effect from 1 April 2021, the time limit for Section 151 expires on 31 March 2021 as per the old regime.

f. **The directions in Ashish Agarwal will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021 -** In the case of Ashish Agarwal, Hon'ble Supreme Court has agreed with the view of the High Courts that the provisions of the new regime will be applicable after 1 April 2021 for all the reassessment notices issued under Section 148 of the Act. As a result, all the notices issued under Section 148 of the Act would have been invalid as per the ratio laid down by the

Hon'ble Supreme Court in the case of Ashish Agarwal. Therefore, Hon'ble Supreme Court in the case of Ashish Agarwal has held that all the 90,000 notices issued PAN India after 1 April 2021 under the old regime shall be considered as show cause notice issued under Section 148A(b) of the Act as per the new regime.

g. **The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by the SC in Ashish Agarwal, and the period of two weeks allowed to the assesses to respond to the show cause notices** – Hon'ble Supreme Court in the case of Ashish Agarwal has directed tax authorities to provide all the relevant material or information to the Assessee and allowed two weeks to the Assessee to respond to the show cause notice. The third proviso excludes the entire time allowed to the Assessee to respond to the show cause notice while computing the period of limitation.

   Thus, as per the directions of the Ashish Agarwal, the deemed show cause notices issued between the period 1 April 2021 till 30 June 2021 were stayed till the date of supply of information by the Assessing officer. Further, time allowed to the Assessee to respond to the show cause notice i.e. two weeks also needs to be excluded while computing the period of limitation.

h. **The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside** – notices under Section 148 have to be issued as per the time limits specified under Section 151 of the new regime read with TOLA, where applicable. A notice will be considered as invalid if it does not comply with the preconditions as it affects the jurisdiction of the AO. Thus, deemed notice as per the new regime issued under Section 148 of the Act ought to be issued within the time limits specified under the Act read with TOLA.

2. *Hon'ble Delhi High Court[2]: Interest on income tax refund under Section 244A of the Act is payable till the date of order of payment instead of date of refund order*

Background

Nokia Solutions and Networks India Pvt. Ltd. ("the Assessee") filed its return of income for AY 2017-18 wherein tax refund was claimed. The return was processed

[2] Nokia Solutions and Networks India Pvt Ltd Vs ACIT [TS-750-HC-2024(DEL)]

under Section 143(1) of the Act and refund was determined along with interest under Section 244A of the Act on 30.03.2019. However, the Assessee received the refund only on 18.10.2019. Aggrieved by the short interest, the Assessee filed a writ petition before Hon'ble Delhi High Court.

Before the High court, the Assessee contented that interest should accrue until the actual refund date i.e.18.10.2019. However, the tax authorities contended that interest was to be paid only until 30.03.2019, i.e. the date of the "grant of refund".

Judgement of Hon'ble Delhi High Court

The Hon'ble Delhi High Court held that **"grant of refund"** under Section 244A implies the **actual payment date**, not the date of refund order. As the interest compensates for the time value of money, it is unjust to halt interest accrual before payment is released. Accepting the tax authority's view could permit prolonged withholding of refund without interest and the same is impermissible.

Accordingly, the Hon'ble Delhi High Court directed the AO to recalculate the interest up to the actual date of payment and release this recalculated amount to the Assessee within four weeks.

3. *Hon'ble Delhi High Court[3]: Quashes re-assessment proceedings as time barred under Section 149(1)(b); Follows Rajeev Bansal*

Background

Felix Generics Pvt Ltd ("the Assessee") received a reassessment notice under Section 148 of the Act dated 31.08.2024 for AY 2017-18 (impugned notice) claiming that certain income had escaped assessment. The Assessee challenged this notice by filling writ before the Hon'ble Delhi HC, asserting that it was issued beyond the

[3] Felix Generics Private Limited Vs. DCIT [TS-760-HC-2024(DEL)]

statutory time limits prescribed by Section 149 of the Act. Under the erstwhile Section 149 of the Act a reassessment notice can be issued within four years from the end of the relevant AY. In cases involving income exceeding ₹1 lakh, this period extends to six years.

The Assessee challenged the validity of notice issued under Section 148A(b), as well as the order issued under Section 148A(d) of the Act. The Assessee contended that the matter is covered by the decision of the Hon'ble Delhi HC in the case of **Manju Somani**[4].

During the Writ proceedings, the Assessee cited the Supreme Court's ruling in case of **Rajeev Bansal**[5], emphasizing that the new time limit for issuance of notice under Section 148 of the Act is applicable prospectively. If the notice can be validly issued under the erstwhile Section 149 for a particular AY, then only the notice can still be issued under the new regime.

The Assessee contended that the period of six years for the relevant AY 2017-18 expired on 31.03.2024. The impugned notice has been issued thereafter, and the same is thus barred by limitation.

Judgement of Hon'ble Delhi High Court

The Hon'ble Delhi High Court ruled in favour of the Assessee holding that the reassessment notice for AY 2017-18 should have been issued on or before 31.03.2024 (i.e. period of 6 years from end of AY 2017-18). Hence, the impugned notice dated 31.08.2024 was issued after 31.03.2024 was time-barred and therefore invalid.

4. *Hon'ble Bombay High Court[6]: Employees not liable for deposit of TDS on employer's failure and breach of Section 205 of the Act*

Background

Aslam Checkar ('the Assessee) an employee, received a demand notice from the tax authorities, requiring him to pay tax along with interest due to failure of his employer to deposit tax on his salary. The Assessee was part of a company that had deducted TDS from salary of employees but did not deposit it with the government. Since 2019, the employer was involved in criminal proceedings and was under investigation by ED / SEBI, leading to arrests of its directors and senior officers. This

[4] Manju Somani Vs. ITO [TS-558-HC-2024(DEL)]
[5] Rajeev Bansal Vs. Union of India [TS-725-SC-2024]
[6] Aslam Checkar [TS-712-HC-2024(BOM)]

situation caused salary delays and payment issues, with some employees not receiving salaries from April 2020 onwards and others facing issues with statutory payments like provident fund contributions, etc.

Given these defaults, some employees left the company and later received demand notices for payment of taxes along with interest, on account of non-deposit of TDS. The Assessee filed in submission that Section 205 of the Act protects him from such demands, as it states that when tax is deducted at source, the employee should not be held liable to pay it. Further, the Assessee made representation on the income-tax portal for withdrawal of demand, but no action was taken.

Judgement of Hon'ble Bombay High Court

The Hon'ble Bombay High Court held that the Assessee cannot be held liable for the employer's failure to deposit TDS. The High Court emphasized that under Section 205 of the Act, the responsibility for depositing TDS lies solely with the employer. The Hon'ble High Court found that demand notice issued by the Tax Authorities was in violation of Section 205 of the Act, which prevents an employee from being called upon to pay taxes that were deducted by the employer but not remitted to the government.

The Hon'ble High Court observed that the action of shifting the liability to employees by the tax authorities lacked legal basis and contradicted both the provisions of the Act and an office memorandum issued by the CBDT dated 11.03.2016, which reiterated that employees should not be held liable in cases where TDS is deducted but not deposited by the employer. Consequently, the Hon'ble High Court quashed the impugned demand notice, held that the Assessee is exempt from demand and directing that no coercive measures be taken against him regarding the said dues.

5. ***Hon'ble Bombay High Court[7]:*** *Anonymous donations received by trust registered under Section 80G eligible for exception under Section 115BBC(2)(b) of the Act*

Background

Shree Sai Baba Sansthan Trust – Shirdi (the Assessee Trust) was initially constituted in 1953. Subsequently, by an order passed in 1982 by the Hon'ble Bombay High Court, administration of the Assessee Trust was vested in the hands of 'Board of Management', constituted by Charity Commissioner. The Assessee Trust was later reconstituted in 2004 by an enactment of the State Legislature entitled 'Shri Sai Baba Sansthan Trust (Shirdi) Act, 2004 ['Sai Baba Trust Act']. The Assessee Trust was also registered under Section 12A and Section 80G of the Act.

The Assessee Trust filed its return declaring NIL income. During the assessment proceedings, the AO noted that Assessee Trust received anonymous donations by way of 'hundi collections' to the extent of 70% of aggregate donations. Further, the AO also contended that since Assessee Trust was registered under Section 80G of the Act, the trust is solely established for charitable purposes and should not have religious activities. Further, the AO held that provision of Section 80G(5) of the Act states that eligible institution or trust cannot be for the benefit of any particular religious community or for any purpose other than charitable purpose.

The AO resorted to apply provision of Section 115BBC(1) of the Act wherein it is stated that if anonymous donations are received by institutions registered under Section 10(23C) or by any trust, then such trust shall be subject to tax at thirty percent on the anonymous donations received in excess of higher of (A) 5% of total donations received or (B) INR 1 Lakh.

The Assessee Trust asserted that it was both a religious and charitable trust. Therefore, it is covered by the exception set forth in Section 115BBC(2)(b) of the Act for trusts created or established wholly for religious and charitable purposes. The Assessee Trust referred to its objects set out in Trust Deed and pointed out that there were several places of worship in its premises. This evidenced that Assessee Trust was a trust with mixed objects (charitable and religious). The Assessee Trust contended that entities having mixed objects were not excluded from the definition of 'charitable purpose' under Explanation 3 to Section 80G of the Act. It clearly asserted that while the objects of the Assessee Trust were predominantly charitable, it also served religious purposes. The Assessee Trust furnished details of expenditure incurred for religious purposes which comprised of 0.49% of its total

[7] Shree Sai Baba Sansthan Trust – Shirdi [TS-740-HC-2024(BOM)]

income. Accordingly, the Assessee Trust submitted that it complied with Section 80G(5) of the Act. Consequently, it was entitled to benefit available under Section 115BBC(2)(b) of the Act. However, the AO disregarded the submissions of the Assessee and issued assessment orders for AY 2015-16, 2017-18 and 2018-19 thereby considering the anonymous donations as taxable income.

Aggrieved by the assessment orders, the Assessee Trust filed appeals before the CIT(A). The CIT(A) observed that meaning of 'religious purposes' cannot be interpreted in a narrow sense to denote furtherance of a particular religion. The interpretation of religious purposes should be done in an inclusive manner and in broad sense. Further, the registration made under Section 80G (as approved in terms of Section 10(23C)(v) of the Act) was not withdrawn. After a comprehensive analysis of objects, constitution and affairs of the Assessee Trust, the CIT(A) held that Assessee Trust existed wholly for public, religious and charitable purposes. Accordingly, the CIT(A) deleted the impugned addition made by AO and held that Assessee Trust was entitled to benefit under Section 115BBC(2)(b) of the Act.

Aggrieved by the appellate orders passed by the CIT(A), the tax authorities filed appeals before the Hon'ble Mumbai ITAT. The Hon'ble ITAT considered the Trust deed, Sai Baba Trust Act and confirmed the findings of the CIT(A). Aggrieved by the order of the Hon'ble ITAT, the tax authorities filed an appeal before the Hon'ble Bombay High Court.

Before the Hon'ble HC, the tax authorities contended that expenses on religious activities would have been more than 5% of the total donations as compared to meagre expenses shown in its books of accounts. Per Contra, the Assessee Trust submitted that it has a shrine (temple) and all attributes of religious activities are performed on different festivals as per established practice. It also contended that when the findings of the facts are concurrently recorded by the CIT(A) and ITAT, which are not perverse, no question of law could be raised by the tax authorities. In this context, the Assessee Trust relied on the judgment of the Hon'ble Supreme Court in the case of K. Ravindranathan Nair[8] that the ITAT is final fact-finding authority.

[8] K. Ravindranathan Nair Vs. CIT [TS-5099-SC-2000-O]

Judgment of Hon'ble Bombay High Court

The Hon'ble Bombay High Court observed that object of Section 80G of the Act is not only to provide a benefit to taxpayers in availing deduction of the charity which they would make, but also to enable the charitable entity to implement their objects of welfare and well being of society at large. It also observed that Section 80G(5B) implicitly recognizes the trust having religious activities. Hence, if such trust incurs any expenditure of an amount not exceeding 5% of its total income, then it would be regarded as institution covered under Section 80G. Hence, the position adopted by the tax authorities that Section 80G applies only to charitable entities is inappropriate. Such myopic reading of Section 80G would be wholly impermissible.

Further, the Hon'ble Bombay High Court noted that the Hon'ble ITAT has examined Trust Deed and Sai Baba Trust Act. The objects stated in Sai Baba Trust Act includes maintenance of temple, conduct and performance of rituals, offering of prayers, performance of religious festivals. The Hon'ble High Court also noted that ITAT has appreciated the material and recorded a finding that Assessee Trust is regarded as a religious place in Maharashtra for tourist and public. This factual position concurrently recorded by CIT(A) and confirmed by ITAT was not controverted by the tax authorities. It noted that provision of Section 80G and Section 115BBC are independent of each other. Agreeing on the reliance by the Assessee Trust on the judgment of K. Ravindranathan Nair (supra), the Hon'ble High Court held that view taken by CIT(A) and confirmed by ITAT is correct in law and in facts. Accordingly, the appeal filed by the tax authorities is dismissed.

6. ***Hon'ble Gujrat High Court[9]:*** *Notice issued under Section 148 of the Act by jurisdictional AO is valid in search cases even under e-assessment scheme.*

Background

Talati and Talati LLP ('the Assessee') is a Chartered Accountant firm engaged in providing Professional/Consultancy/Advisory services. The Assessee filed its original return under Section 139 of the Act on 14.3.2022 for AY 2021-22. Further, in pursuance of information obtained during search and seizure operations, the Assessee received a notice under Section 148 of the Act for AY 2021-22 from the Jurisdictional AO. In response to the notice received under Section 148 of the Act, the Assessee filed its return of income on 30.5.2024.

The Assessee also filed a writ petition before the Hon'ble Gujrat High Court challenging the validity of notice issued under Section 148 of the Act on the ground that it was issued by the Jurisdictional Assessing officer in violation of Section 151A

[9] Talati and Talati LLP Vs. ACIT [TS-744-HC-2024(GUJ)]

of the Act as has been inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act' 2020 with effect from 01.11.2022 read with E-Assessment Scheme introduced by Central Government vide notification dated 29.03.2022. Assessee contented before the Hon'ble Gujrat High Court that the notice can be issued in pursuance of the E-Assessment scheme vide selection of cases based on pre-specified algorithm and not by a Jurisdictional AO. Assessee heavily relied on the judgement of Hexaware Technologies Ltd. V. Assistant Commissioner of Income Tax[10].

Judgement of Hon'ble Gujrat High Court

The Hon'ble Gujrat High Court observed that Central Government introduced a scheme - “E-Assessment of Income Escaping Assessment”. According to the E-Assessment scheme it is mandatory for the Tax authorities to issue notice under Section 148 of the Act through automated allocation in faceless manner with aim to impart greater efficiency, transparency and accountability by eliminating the interface between income tax authority and the Assessee or any other person to the extent technologically feasible.

However, the Hon'ble Gujarat High Court clarified that the said scheme does not apply to cases where notices are issued based on information obtained from search and seizure operations under Section 132 of the Act. The ruling distinguished between Explanation 1 and Explanation 2 of Section 148 of the Act. The ruling also emphasized on the fact that search and seizure operations necessitates the application of human judgment.

Further the Hon'ble Gujarat High Court noted that in case of Hexaware Technologies the issuance of notice under Section 148 of the Act, falls under Explanation 1 of Section 148 of the Act, and therefore the same is not applicable to the current facts of the case.

The court upheld the validity of the notice issued by the Jurisdictional AO and dismissed the Assessee's writ.

[10] TS-298-HC-2024BOM

7. *Hon'ble Lucknow ITAT[11]: Denial of claim under Section 80-IA of the Act, merely on the basis of technical reasons is not justifiable.*

Background

Apco Infratech Private Limited ("Assessee"), is a company engaged in the business of civil construction including infrastructure facilities. During the FY 2013-14 the Assessee was carrying out four projects awarded by UP PWD department. A search and seizure operation under Section 132 of the Act was carried out on the business/residential premises of the Assessee group on 31.7.2013. Pursuant to the search, the AO issued notice under Section 142(1) of the Act requiring the Assessee to file the return of income. Assessee filed original return of income on 28.11.2024 declaring total income of INR 61,21,73,600 (no deduction under Section 80-IA was claimed in the original return of income). Subsequently, during the ongoing assessment proceedings pursuant to search, Assessee filed a revised return of income on 19.03.2016 and claimed the deduction under Section 80-IA of the Act amounting to INR 4,68,60,927 for its 4 units situated in various parts of the state Uttar Pradesh in India. Further on 21.03.2016 the Assessee again filed a revised return altering the amount of claim under Section 80-IA to INR 4,66,10,927.

However, the AO was of the opinion that the amount of INR 4,66,10,927 shall not be allowed as a deduction as the same is only allowed for the claim made in original return filed within due date and it is mandatory to maintain separate books of accounts for all the 4 projects and to file separate audit report in Form 10CCB for each of the project. Accordingly, AO disallowed the claim of deduction under Section 80-IA of the Act of INR 4,66,10,927. Aggrieved by the same the Assessee filed an appeal before the Hon'ble CIT(A).

The Hon'ble CIT(A) passed the judgement in the favour of the Assessee and allowed the deduction under Section 80-IA of the Act. The Hon'ble CIT(A) noted that Assessee does maintain separate books of accounts for each of the project as required by Rule 18BB of the Rules and separate audit report has been obtained for each of the project. However, due to technical reasons each and every audit report separately could not be uploaded along with Form 10CCB on the income tax e-portal and therefore the Assessee requested the auditor to consolidate the audit report for the said 4 projects and upload the consolidated report in Form 10CCB. Further, for allowing the claim of deduction under Section 80-IA of the Act Hon'ble CIT(A) relied on the judgement of M/s Vijay Infrastructure Limited[12]. In the case of Vijay Infrastructure Limited it was held that where time is available for revising the return of income originally filed under Section 139(1) of the Act, return filed under Section

[11] Apco Infratech Pvt. Ltd Vs. ACIT [TS-687-ITAT-2024(LKW)]

[12] ITA No. 254,452,35 to 37, 38 to 39, 696/LKW/2015 (AY 2005-06 to AY 2011-12) Order dated 30.10.2015

153A shall be considered as return filed under Section 139(1) of the Act. Aggrieved by the order of Hon'ble CIT(A), the tax authority filed an appeal to Hon'ble ITAT.

Decision of Hon'ble Lucknow ITAT:

The Hon'ble Lucknow ITAT placed reliance on the judgement of the Hon'ble Kerala High Court in the case of Chirakkal Services Co-operative Bank[13]. In the said case of Chirakkal Services Co-operative Bank the Hon'ble High Court held that return filed by Assessee beyond the period stipulated under Section 139(1) or Section 139(4) or under Section 142(1) or Section 148 of the Act can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est and invalid for the purpose of deciding exemption under Section 80P of the Act.

The Hon'ble ITAT relying on the above Hon'ble Kerala High Court's decision passed a judgement in favour of the Assessee. Thus, the ITAT concluded that no interference required to the order passed by the CIT(A).

[13] [TS-5244-HC-2016 (Kerala)-O]

B. International Tax

1. ***Hon'ble Delhi ITAT[14]:*** *Technical non-invasive inspection services and integrity assessment services does not qualify as 'FTS' in the absence of fulfilment of 'make available' condition as per India-Singapore DTAA*

Background

Transkor Global Pte Ltd ('the Assessee') is a company resident in Singapore. It is engaged in the business of providing technical non-invasive inspection services and integrity assessment / scanning of off-shore pipelines services under the sea or surface ('said technical services'). The Assessee developed a system of non-invasive survey known as 'Magnetic Tomography Method (MTM). The Assessee applied for a Nil withholding certificate under Section 197 of the Act. However, the Assessee received the lower withholding certificate directing the payor to deduct tax at 4% while making payments to the Assessee.

During the AY 2019-20 and AY 2020-21, the Assessee did not consider the income arising from provision of said technical services as taxable in its return. During the assessment proceedings, the Assessee contended that provision of said technical services does not make available technical knowledge, experience, skill, know-how or process enabling the recipients to apply the technology contained therein as mandated by Article 12(4)(b) of the India-Singapore DTAA. Hence, the said technical services does not fall within the ambit of 'FTS'. Also, the Assessee submitted that it was a resident of Singapore and incomes received during both the AYs were taxable only in Singapore. Further, the Assessee submitted the TRC issued by Singapore Tax Authorities and Form 10F substantiating that it had no PE in India. It also filed the global audited financial statements before the AO and the lower withholding certificate.

However, the AO held that receipts arising from said technical services as taxable under the head 'other income' in accordance with Article 23 of India-Singapore

[14] Transkor Global Pte Ltd [TS-742-ITAT-2024(DEL)]

DTAA and levied tax at 40% plus applicable surcharge and education cess. Also, the AO did not grant the benefit of India-Singapore DTAA.

Aggrieved by the assessment order, the Assessee filed an appeal before the Ld. CIT(A). The CIT(A) sought a remand report on all the contentions put forth by the Assessee. The AO opined that nature of the receipts cannot be verified owing to non-compliance of notice by the Assessee and so, such receipts were considered as 'other income'. The Assessee submitted the Form 15CA and Form 15CB to establish the nature of the receipts. The CIT(A) observed that tax authorities did not dispute the fact that Assessee did not have PE in India and that it was Singapore tax resident in terms of Article 4 of India-Singapore DTAA. The CIT(A) also noted that the services provided by the Assessee are apparently technical in nature and hence, it falls within the ambit of 'FTS'. However, as the said technical services do not satisfy the make available clause prescribed under Article 12(4) of the India-Singapore DTAA, the same cannot be taxed in India. It also observed that since the services provided by the Assessee does not get covered under Article 12, the receipts will fall under the 'business income' under Article 7 of the India-Singapore DTAA and not as 'other income' under Article 23. Further, as the Assessee does not have PE in India, the said receipts cannot be subject to tax in India under the business income. In view of the above factual observations, the CIT(A) granted the relief to the Assessee.

Aggrieved by the order passed by the CIT(A), the tax authorities filed an appeal before the Hon'ble Delhi ITAT. The tax authorities invoked the provision of Section 90(1)(b) of the Act to contend that Assessee was engaged in treaty shopping arrangements.

Decision of Hon'ble Delhi ITAT

The Hon'ble Delhi ITAT reiterated the well settled law that tax authorities cannot improve its case before the Tribunal by stating new facts or new allegations. Further, it also noted that said provision is applicable from AY 2021-22 and is not applicable to the Assessee for both the AYs. Hence, the Hon'ble ITAT disregarded this contention of tax authorities.

Also, the Hon'ble ITAT observed that tax authorities could not controvert the factual findings recorded by the CIT(A). Accordingly, the Hon'ble ITAT noted that there is no infirmity in the order passed by the CIT(A) and therefore, dismissed the appeal filed by the tax authorities.

2. ***Hon'ble Mumbai ITAT[15]:*** *Active involvement in commercial activities is a pivotal factor while ascertaining 'Center of Vital interest' as per Article 4(2)(a) of India-US DTAA*

Background

Ashok Kumar Pandey (the Assessee) is a US citizen holding US passport and an OCI. He qualified as 'resident' in India as per Indian tax laws since AY 2010-11. He was also a resident of US as per US tax laws for the period from April 2012 to March 2013 (AY 2013-14). As he became dual tax resident, he analysed the tie-breaker provisions as per Article 4(2)(a) of the India-US DTAA. The factual analysis made by the Assessee is summarised below:

Particulars of Facts	India	US
Citizenship / Nationality	OCI	US citizen
Tax Residence	Yes – as per the Act	Yes – as per US tax laws
Permanent Home	Available [Purchased in 2008]	Available [Purchased in 1997]
Factors determining Center of Vital Interest **a. Personal Relations**		
Passport	-	US
TRC issued by	-	US
Citizenship / Nationality of family members (i.e., Parents, Siblings, Wife, Son and 2 Daughters)	-	All are US Nationals
Physical Stay of family members	Wife, Son and 1 daughter stays in India	His 1 daughter stays in the US for education purpose. Parents and Siblings also stays in US.
Economic Interest		
Investments	• Investment by way of 50% shareholding in Revel Films Pvt Ltd. ('Company') (Balance 50% held by his wife). • Mutual Fund Investments • Bank Accounts in 2 banks	• Cash • Investment in partnership firm • Investment in LLC • UBS portfolio showing investment in securities
Source of Income	• Interest income • Capital loss	• House Property rental income • Dividend income • Interest income • Capital Gains on sale of shares

[15] Ashok Kumar Pandey [TS-736-ITAT-2024(Mum)]

Considering the above factual matrix, the Assessee considered himself as ultimate tax resident of US. Accordingly, he filed income-tax return in India by offering only Indian income to tax. He did not offer US income in his Indian income-tax return.

During the assessment proceedings, the Assessee placed various details relating to his US income. In response to SCN issued by the AO for considering the US income as taxable income, the Assessee filed a reference under Section 144A of the Act. The JCIT called a report from AO and observed that Assessee is a MD in the Company and actively participated in affairs of the Company. He also observed that Assessee has received passive income (such as rental income and investment income) in the US for which he was not actively involved. Assessee was also residing in India with family for major part of year. Accordingly, he held that the Assessee's Center of vital interest (personal and economic interest) are closer to India and directed AO to consider his US income as taxable in India.

Based on the directions issued by JCIT, the AO completed the assessment after including his US income. Aggrieved by the assessment order, the Assessee filed an appeal before CIT(A). The Assessee submitted a copy of the TRC issued by US tax authorities but did not provide any written submission. Consequently, the CIT(A) held that the Assessee would be considered as resident of India based on his physical stay and his world-wide income would be taxable in India. Also, the CIT(A) held that as no taxes were paid in the US, the Assessee would not be entitled to any Foreign Tax Credit.

Aggrieved by the Appellate order passed by CIT(A), the Assessee filed an appeal before the Hon'ble ITAT. The Assessee put forth his factual matrix and relied on the decision in case of DCIT vs. Kumar Sanjeev Ranjan[16] wherein several tests were examined to determine the center of vital interest. Per Contra, the tax authorities relied on the assessment order.

[16] DCIT vs. Kumar Sanjeev Ranjan [TS-191-ITAT-2019(Bang)]

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT observed that tax authorities did not dispute the fact that Assessee was a resident in India and that Assessee has permanent home available to him in India as well as US. The Hon'ble ITAT noted that Assessee and his entire nucleus family were staying in India during the AY 2013-14. Further, his one daughter was staying in US for education purpose. Also, the Hon'ble ITAT noted that determination of center of vital interest is a highly factual analysis which may not be applicable to any other individual or which has been decided by courts in case of other individuals. It also observed that connect with nucleus family is more important than extended family. For determining the economic relationship, more credential should be given to active involvement in commercial activities than passive investments.

It also noted that Assessee was carrying on business in a Company, engaged in distribution of films. The Assessee invested in the Company by way of loan which was mostly tied up in WIP and bank balance was also financed by the Assessee. The Assessee attended 5 board meetings with his wife which reflected his active involvement in running of the Company. Further, the Hon'ble ITAT observed that in the US, the Assessee did not have any active involvement for earning wages, remuneration or profit. He only earned passive income by way of dividend, interest and rental income.

Based on the comprehensive analysis of personal and economic relationship, the Hon'ble ITAT dismissed the appeal filed by the Assessee and held that center of vital interest of the Assessee remains close to India. Therefore, he is resident of India as per Article 4(2)(a) of the India-US DTAA. Consequently, his incomes earned in US during the said AY would be taxable in India and no FTC in respect of US taxes can be claimed as there was no tax payment reflected in his US tax return.

II. Transfer Pricing

1. ***Hon'ble Delhi High Court[17]:*** *Timelines prescribed under Section 144C of the Act are mandatory for AO irrespective of delay in filing objections by the Assessee.*

Background

The AO passed a draft assessment order under Section 144C of the Act on 04.03.2022 in the case of Mavenir UK Holdings (the Assessee). The Assessee was required to file its objections within one month of receipt of the draft assessment order under Section 144C(2) of the Act. However, the Assessee filed its objections on 06.04.2022 (i.e., beyond 30 days period). The AO passed the final assessment order under Section 147 read with Section 144 of the Act on 27.12.2022.

The Assessee filed an appeal before the Hon'ble Delhi ITAT challenging the final assessment order on various grounds (including validity). The Assessee contended that the impugned assessment order is barred by limitation. The Hon'ble ITAT held that although Assessee has filed its objections after the due date, the AO should have finalized the Assessment order within the time period prescribed under Section 144C(4) of the Act and allowed the appeal of the Assessee. Aggrieved by the appellate order of the Hon'ble ITAT, the tax authorities filed an appeal before the Hon'ble Delhi High Court.

Judgment of Hon'ble Delhi High Court:

The Hon'ble Delhi High Court noted that as per Section 144C(4) of the Act, the AO was required to pass the final assessment order within one month from the end of the month in which period for filing objections under Section 144C(2) of the Act had expired. Since the draft assessment order was passed on 04.03.2022, the final assessment order was required to be passed within period of one month from 30.04.2022. It also observed that the final assessment order was passed beyond the stipulated period (i.e., 27.12.2022). Therefore, the Hon'ble High Court upheld the

[17] Mavenir UK Holdings [TS-425-HC-2024(DEL)-TP]

decision of Hon'ble ITAT in setting aside the impugned order as being beyond the period of limitation.

It also termed the argument of tax authorities that 'Assessee cannot be allowed to take advantage of its own wrong as it had filed its objections beyond the period of thirty days' as insubstantial. Further, it held that AO was required to pass the final order notwithstanding that Assessee has not filed its objections. Accordingly, the Hon'ble High Court dismissed the appeal of the tax authorities.

2. ***Hon'ble Delhi High Court[18]:*** *No question of law arises on disallowance for royalty paid; Upholds ITAT's order*

Background

Sony India Pvt. Ltd ('the Assessee'), is engaged in business of import and distribution of various Sony products. During the AY 2016-17, the Assessee had paid royalty payments of INR 14,69,89,634 to Sony corporation, Japan (AE of Assessee) for use of license to manufacture and sell of Sony products. The said payment was subject to examination by the learned TPO for determining whether it is at arm's length. Majority of these products were manufactured by the OEMs and supplied to the Assessee.

The learned TPO held that since the goods were manufactured by the OEMs, the same did not justify any payment of royalty by the Assessee to its AE. Accordingly, the TPO held that royalty amount of INR 2,79,43,965 paid in respect of goods manufactured by Moser Baer India Ltd. (MBIL) and INR 10,04,88,528 in respect of goods manufactured by Competition Team Technology Ltd. (CTTL) were required to be benchmarked at Nil. Thus, according to the learned TPO, no royalty was payable on the goods of Sony brand dealt with by the assessee, which were manufactured by MBIL and CTTL. Assessee filed objection with Hon'ble DRP which were rejected by the DRP and thereafter Assessee filed appeal before the Hon'ble Delhi Tribunal.

The Hon'ble Delhi Tribunal agreed with Assessee, citing an earlier decision of Delhi HC wherein it was held that TPO's role is only to check whether the payment is fair (i.e at “arm's length price”) - not to question the business reasons for it and accordingly passed the order in favour of the Assessee. The Tax Authorities thereafter filed the appeal before the Hon'ble High Court.

Judgment of Hon'ble Delhi High Court:

The Hon'ble Delhi High Court in agreement to the decision of Hon'ble Delhi Tribunal held that MBIL and CTTL were manufacturing sub-contractors, and the Assessee had been granted the license for use of the intellectual property. The Assessee was

[18] PCIT Vs. Sony India Pvt. Ltd [TS-445-HC-2024(DEL)-TP]

also entitled to get the products manufactured through sub-contractors. Accordingly, there was no substantial question of law arising and therefore no intervention was required to the decision of Hon'ble Delhi Tribunal.

3. ***Hon'ble ITAT Hyderabad Bench[19]:*** *Where PAN of amalgamated company is not withdrawn owing to ongoing litigation, it can't be termed as non-existent company.*

Background

Microsemi India Private Limited (MIPL) was merged into Microchip Technology (India) Pvt. Ltd ("the Assessee") under a scheme of amalgamation vide sanction granted by NCLT, Hyderabad on 21.12.2010 and with effect from appointed date of 01.04.2019. The Assessee had outstanding receivables from its AE for which no benchmarking was made.

The case of MIPL for the AY 2018-19 was selected for scrutiny and notices were sent in name of MIPL. However, the Assessee has repeatedly informed the AO about the merger of MIPL with the Assessee in various submissions. Further, a reference to the TPO was made in respect of the international transaction regarding the outstanding receivables. The TPO has made the adjustment in respect of interest on outstanding receivables and passed the TP order. The AO has passed final assessment order in the name of MIPL after considering the directions issued by DRP. Aggrieved by the final assessment order, the Assessee filed an appeal before the Hon'ble Hyderabad ITAT. The Assessee challenged the final assessment order on legality and TP adjustment in respect of interest on receivables.

A. Validity of final assessment order

The Assessee contended that there is catena of judgments wherein it was held that an assessment order passed on the name of non-existent entity is non-est in the eyes of law. Further, the PAN of MIPL could not be surrendered due to certain unconcluded pending litigation against the MIPL.

[19] Microchip Technology (India) Pvt Ltd [TS-426-ITAT-2024(HYD)-TP]

Per contra, the tax authorities contended that MIPL continues to exist as its PAN was not withdrawn as on date of passing the final assessment order. Further, the tax authorities relied on the judgment of Hon'ble Supreme Court in case of PCIT vs. Mahagun Realtors (P.) Ltd[20].

B. TP adjustment in respect of interest on receivables:

The Assessee contended that transaction of outstanding receivables with its AE was in the regular course of business and hence, should not be benchmarked as a separate international transaction. Further, the Assessee also has trade payables and hence, set-off must be given for transactions of trade payables. Also, it stated that the rate of interest should be considered at LIBOR.

However, the tax authorities contended that Hon'ble Delhi High Court in case of DCIT vs. McKensey Knowledge Centre India Pvt Ltd[21] and co-ordinate bench of Hon'ble Delhi ITAT in case of Bharti Airtel Services Ltd vs. DCIT[22], have held that if there is any delay in the realization of credit arising from sale of goods or services rendered in course of business, it is liable to be visited with TP adjustment on account of interest income short charged / uncharged. Furthermore, it placed reliance on Assessee's own case and submitted that the rate of interest chargeable on trade receivables at 6% was held to be reasonable.

Decision of Hon'ble Hyderabad ITAT

The Hon'ble Hyderabad ITAT relied on the Supreme Court's observations in Mahagun Realtors Pvt. Ltd (supra) to clarify the legal status of entities post-amalgamation. It concluded that both the amalgamated (Microchip Technology India Pvt Ltd) and amalgamating entities (Microsemi India Pvt Ltd) can be treated as existing for litigation purposes. The Hon'ble ITAT noted the dicta of Hon'ble Supreme Court that if a company exists for the purpose of some litigation, it exists for the purpose of tax litigation also. Since the PAN was not surrendered, it was held that MIPL could not claim the assessment order was issued to a non-existent entity. Thus, the assessment order in the name of MIPL was held to be valid, and the Hon'ble ITAT dismissed the ground of appeal of the Assessee.

The Hon'ble ITAT held that it is not open for the Assessee to agitate on the question of benchmarking of interest on outstanding receivables in view of the judgment of McKinsey Knowledge Centre India Pvt Ltd and Bharti Airtel Services Ltd. Further, the Hon'ble ITAT placed reliance on the judgment of Hon'ble Mumbai ITAT in case of Tecnimont ICB House vs. DCIT[23] wherein it was held that the notional interest on the amount receivable from foreign AEs has to be computed by applying LIBOR interest

[20] [TS-248-SC-2022] | [21] [TS-5671-HC-2018(Delhi)-O]
[22] [TS-526-ITAT-2020(Ind)-TP] | [23] [TS-6336-ITAT-2015(Mumbai)-O]

rate for the purpose of computation of TP adjustment, if any. It also noted that this view is affirmed by Hon'ble Bombay High Court in PCIT vs. Tecnimont (P) Ltd[24] Also, the Hon'ble ITAT relied on the case of CIT vs. Cotton Naturals (I) (P) Ltd[25], wherein the Hon'ble Delhi High Court has held that interest rate should be market determined interest rate applicable to the currency concerned in which the loan is to be repaid.

Accordingly, the interest rate of LIBOR can be said to be correct and in line with the judgment of the Hon'ble Bombay High Court in case of Tecnimont (P) Ltd (supra). Therefore, these decisions are binding precedents and should be preferred to decisions of co-ordinate benches of the ITAT. Therefore, it held that interest rate on similar foreign currency receivables / advances should be considered at LIBOR plus 200 basis points and directed the AO / TPO to adopt the same. Also, it directed the AO / TPO to consider both the trade payables and trade receivables for the purpose of notional interest to be charged for determining ALP value of transaction.

4. ***Hon'ble Delhi ITAT[26]:*** *Deletion of TP Adjustment in respect of interest on loan and corporate guarantee upheld*

Background

Jindal Pipes Limited ('the Assessee') is engaged in the business of manufacturing of ERW pipes and tubes as well as trading of HR coils, pipes zink and shocket. During the AY 2007-08, the Assessee carried out the following international transactions with its foreign AE:

1. **Interest received on Loan:** The Assessee have converted the capital WIP given to its AE – Virtue Drilling Pvt Ltd (VDPL) into loan. Further, the Assessee recovered interest thereon at the rate ranging between 11% and 13%. This loan was granted by Assessee to VDPL in USD and repayment of loan and interest payment were also to undertake in USD. Since the Assessee has paid interest to Infrastructure Leasing & Financial Services at same rate of interest, the international transaction of interest received from AE is considered at ALP by applying CUP method.

[24] [TS-6791-HC-2018(Bombay)-O]
[25] [TS-6032-HC-2015(Delhi)-O]
[26] Jindal Pipes Ltd [TS-417-ITAT-2024(DEL)-TP]

2. **Issuance of corporate guarantees:** The Assessee has given corporate guarantees to Infrastructure Leasing & Financial Services and Bank of India for stand by Letter of Credit in connection with the financial assistance to VDPL. The provision of corporate guarantees by the Assessee was considered closely linked to the transaction of transfer of capital WIP to VDPL. This transaction was not benchmarked as it did not have any impact on P & L A/c.

The Assessee filed its return for the AY 2007-08. The return got processed under Section 143(1) of the Act and subsequently, the case was selected for scrutiny and a reference was made to the TPO. The TPO has considered the notional interest rate of 14% based on the interest charged in bond market instead of ALP interest rate adopted by the Assessee. The difference in rate of interest was added to the total income of the Assessee. Further, the TPO imputed notional commission @ 2.75% plus a markup of 200 basis points based on data obtained from SBI. The TPO made this adjustment of notional commission based on the ground that it ought to have charged commission on providing corporate guarantees on behalf of its AE.

Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) relied on the decision of Hon'ble Delhi High Court in DCIT vs. Cotton Natural (I) Pvt Ltd wherein the Hon'ble High Court upheld the application of LIBOR rate of interest on foreign currency denominated loan. In the instant case, as VDPL had paid interest at higher rate than applicable LIBOR rate of 5.4%, the CIT(A) deleted the TP adjustment in respect of interest received on loan.

The CIT(A) also noted that Assessee had 49% equity stake in the AE and pursuant to JV agreement between Assessee and its AE, the Assessee was under an obligation to provide corporate guarantees to the lending bank of AE for implementation of the project of construction of new premium jack-up rig. Accordingly, the CIT(A) deleted the TP adjustment in respect of the notional commission on corporate guarantees.

Aggrieved by the appellate order passed by the CIT(A), the tax authorities filed an appeal before the Hon'ble Delhi ITAT.

Decision of Hon'ble Delhi ITAT:

The Hon'ble Delhi ITAT agreed with the reasons recorded by the CIT(A) for deleting TP adjustments in respect of interest received on loan and notional commission on issuance of corporate guarantees.

Further, the Hon'ble Delhi ITAT relied on the judgment of Hon'ble Rajasthan High Court in PCIT vs. Vaibhav Global Limited[27] wherein the ITAT order for deletion of TP adjustment made in relation to corporate guarantees was upheld. Accordingly, the Hon'ble Delhi ITAT dismissed the appeal of the tax authorities.

[27] ITA No. 291/2017

5. *Hon'ble Chennai ITAT[28]: Finds CIT(A)'s observations qua TP-issues unnecessary, allows management fee deduction under Section 37 of the Act on account of commercial expediency and other allowances.*

Background

SPI Technologies India Private Limited ('the Assessee') is a part of the SPi group which is engaged in the business of data processing and related services, supply of structured data for electronic publishing and providing end-to-end project management services. Pursuant to an order of the Hon'ble Madras High Court dated 04.09.2014, Laser Words Private Limited was amalgamated with SPi Technologies India Private Limited with effect from 01.04.2014. AO was intimated about the amalgamation.

Assessee filed its ROI for the AY 2013-14 and 2014-15 under Section 139(1) of the Act by declaring income of INR 7.94 crores and INR 20.40 crores respectively. Assessee paid Rs. 3.96 Crs and 3.28 Crs for AY 2013-14 and 2014-15 respectively towards management fees to group entities.

The case of Assessee was selected for scrutiny assessment, wherein the certain additions were made by the AO, which were upheld by Ld. CIT(A). The additions made by AO along with reason for addition and remark of CIT(A) is mentioned hereunder:

Sr. No.	Addition/Disallowance made by AO	AO's remark	Ld. CIT(A) remark
01	Management Fees paid to group entities	The AO disallowed the management fees solely on the ground that Assessee failed to provide supporting documents for claiming the expenditure	The ld. CIT(A) upheld the disallowance of the AO and also stated that the Assessee did not substantiate the Arm's length value and the commercial expediency to claim the expenditure
02	Disallowance u/s 40(a)(l)	The AO made addition u/s 40(a)(i) on account of non-deduction of tax for payment of sales commission made to Laser Words US Inc	The Ld. CIT(A) upheld AO's addition
03	Variation of amount of deduction under Section 10AA	The AO reworked the deduction under Section 10AA based on turnover ratio.	The Ld. CIT(A) upheld AO's addition

In respect of management fee expense, the Assessee argued before the Hon'ble Chennai Tribunal that due evidence for claim of expenditure were provided during the course of assessment proceedings. Also, the relevant page of paperbook were referred wherein the supporting documents were enclosed. Further, the Assessee also explained that Assessee has a covered judgment wherein the said expenses are

[28] DCIT Vs. SPi Technologies India Private Ltd [TS-431-ITAT-2024(CHNY)-TP]

duly allowed and wherein the same were also determined to be at Arm's length by the department (Ld. TPO order 31.12.2018). The covered judgement was passed in case of the Amalgamating company prior to amalgamation.

For disallowance under Section 40(a)(i) the Assessee explained to the Hon'ble Tribunal that the sale commission paid to Laser Words US Inc. is for the purpose of the business and the said amount is not taxable in India under the Act r.w. Article 12(4)(b) of India – US DTAA being the services are not made available in India.

With respect to deduction claimed under Section 10AA the Assessee stated the Assessee operates two units: a Software Technology Park (STP1) and a SEZ unit, claiming a deduction of Rs. 4.83 crores for the SEZ unit. To determine the profits accurately, the Assessee apportioned total expenditures between the two units based on actual expenses incurred. However, the AO rejected the Assessee's calculations and instead apportioned the expenditures based on the turnover of the units

Decision of Hon'ble Chennai ITAT

Ground 1

The Hon'ble Chennai ITAT ruled in favour of Assessee allowing the deduction of the disputed management fees under Section 37 of the Act. The Hon'ble ITAT concluded that the expenses were incurred wholly and exclusively for the purpose of business and were necessary for the company's operational framework. Further, the Hon'ble ITAT also stated that the requisite documents were duly furnished before the AO and allegation of AO of non-furnishing of details is baseless. Also, the Hon'ble ITAT ruled that the argument of Ld. CIT(A) regarding transfer pricing issues are not connected with the facts of the case and have been found to be unnecessary and irrelevant. The case is duly covered by the judgement passed in Assessee in earlier years, wherein the commercial expediency was duly substantiated.

Ground 2

On consideration of the arguments and the evidence, the Hon'ble ITAT agreed with the Assessee. The Hon'ble ITAT concluded that since the amounts paid to Laser Words US Inc were not liable for tax under Indian law, there was no requirement to withhold tax at the time of payment. The Hon'ble ITAT referred to the earlier decision involving Laser Words US Inc, confirming that the payments could not be classified as FIS under the India US-DTAA.

Ground 3

The Hon'ble ITAT noted that AO's decision was made without considering the profit computation details submitted during the assessment proceedings and accordingly the Hon'ble ITAT remanded back the matter to AO for calculation.

III. Important Circulars and Notifications

1. *Extension of due date for furnishing return of income for the AY 2024-25*[29]

The CBDT has extended the deadline for filing Income Tax Returns for the AY 2024-25. This applies to taxpayers mentioned in clause (a) of Explanation 2 under Section 139(1) of the Act. The new due date is now moved from 31.10.2024 to 15.11.2024.

2. *CBDT introduces Form 12BAA for claiming TDS / TCS in case of salaried taxpayers suffered while making payments for their minor children*

The CBDT issued a notification[30] wherein a new Form 12BAA was introduced to enable the salaried taxpayers to claim TDS / TCS while making payments on behalf of their minor children. Earlier, the salaried taxpayers did not have any mechanism to submit such TDS / TCS details to their employer at the time of computing withholding tax. Accordingly, the CBDT have amended the Rule 26B of the Rules. It also amended the Section 206C to the effect that credit of TCS to a person other than collectee can be allowed. The employees shall have to submit the Form 12BAA to their employers to report TDS/TCS. Please click below to access the notification:

https://incometaxindia.gov.in/communications/notification/notification-112-2024.pdf

3. *Guidelines for Compounding of Offences under the Income-Tax Act, 1961*[31]

The Guidelines take effect immediately, applying to all new and pending applications not yet resolved. Pending applications with calculated but unpaid compounding charges will be re-assessed to reflect any reductions, though no refunds will be issued for previously paid higher charges. Applications rejected for minor correctable

[29] Circular No.13/2024 dated 26.10.2024
[30] Notification No. 112/2024 dated 15.10.2024
[31] Guidelines from CBDT dated 17.10.2024

issues (e.g., unpaid fees or incorrect forms) may be re-filed with payment credits applied to new charges. Applications previously rejected on substantive grounds by the Competent Authority will not be reconsidered.

Conditions for consideration of Compounding Application

Offences may be considered for compounding if all the following conditions are satisfied:

1. Compounding Application

To apply for compounding, submit the application on Rs. 100 stamp paper in the prescribed format to the Pr. CCIT or Pr. DG[T]. The application can cover offences for a single financial year (for taxpayers) or quarter (for tax deductors) or combine multiple periods as a "Consolidated Compounding Application." Rejected applications may also be re-submitted in one combined form. Applications can be filed at any time after the offence, even if it has been noted by the Department or if prosecution has already started.

2. Compounding Application Fee

For Compounding Applications or Consolidated Compounding Applications submitted on or after the issuance of these guidelines, applicants must pay a non-refundable Compounding Application Fee as follows:

Single Compounding Application: Rs. 25,000 per application

Consolidated Compounding Application: Rs. 50,000 per application

3. Payment of all taxes, interest & other sums relating to offence for which compounding sought

Before submitting a Compounding Application, all related taxes, interest (including under Section 220 of the Act), penalties, and dues must be fully paid. If outstanding amounts are found by the Department, they must be cleared within 30 days of notification (or up to three months if extended) for the application to be valid.

4. Undertaking by the Applicant:

The applicant must commit to paying the compounding charges determined by the Principal Chief Commissioner of Income Tax (Pr. CCIT) or Principal Director General of Tax (Pr. DG[T]) within the specified timeframe.

5. Withdrawal of Appeals:

The applicant must also agree to withdraw any appeals related to the offences being compounded. If an appeal includes mixed grounds, the applicant should undertake to withdraw only those grounds that pertain to the offences under consideration.

6. Consolidation of Offences:

Compounding applications under Sections 276B/276BB must include all TAN-related defaults for the specified period. TDS defaults will be assessed by aggregating non-payment defaults from all TDS statements filed by the deductor for that quarter.

7. Revival of a defective application:

Applications that do not meet the specified conditions or are deemed defective due to issues such as:

- Non-payment of outstanding taxes, interest, penalties, or other dues related to the offence.
- Incorrect application format.
- Filing for the wrong financial or assessment year, or under the wrong section.

will be treated as "defective" and will not be processed.

8. Compounding Charges

For compounding charge calculations, "tax" includes taxes, surcharges, and cesses but excludes interest. Charges for a first compounding or consolidated application are calculated at the base rate, with subsequent applications classified as second, third, etc., with progressively higher charges. If an applicant has previously compounded the same offence, later charges will increase accordingly. Any newly disclosed offences in a subsequent application will be charged separately. Applications submitted over 12 months after the prosecution complaint filing will face an additional 50% charge increase. Applications under prior guidelines, whether pending, rejected, or compounded, will count as the "first" application.

Further, the compounding charges regarding the offences of TDS defaults, TCS defaults, evasion of tax payments and other offences were reduced from multiple rates of 2%, 3% and 5% to a single rate of 1.5% per month. Also, there would not be any separate compounding fee from co-accused.

For detailed guidelines on compounding of offences under Income tax Act **Click here**.

IV. Compliance Calendar Nov. 24

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Nov	October 2024	TDS / TCS Payment	Non-Government Deductors
02	15th Nov	Form 16A (July to Sept)	Salaried Employees	All deductors
03	15th Nov	FY 2023-24	ITR due date for corporate and tax audit taxpayers*	For All taxpayers to whom tax audit is applicable (non TP cases)
04	30th Nov	FY 2023-24	Filing of Income tax Return (Including partner of such firm covered under TP)	Assesses covered under Transfer Pricing
05	30th Nov	FY 2023-24	Safe Harbour Form 3CEFA	Assesses covered under Transfer Pricing
06	30th Nov	FY 2023-24	Transfer pricing Master file Form 3CEAA	Assesses covered under Transfer Pricing
07	30th Nov	FY 2023-24	Transfer pricing CBCR Form 3CEAD	Assesses covered under Transfer Pricing
08	30th Nov	FY 2023-24	Filing of Income tax Return (Including partner of such firm covered under TP)	Assesses covered under Transfer Pricing

* Note: As per Circular No.13/2024 dated 26.10.2024 the ITR due date for corporate and tax audit taxpayers is extended to 15.11.2024

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Nov	October 24	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Nov	October 24	GSTR – 8 (TCS)	Person required to collect TCS under GST

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
03	11th Nov	October 24	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Nov	October 24	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th Nov	October 24	GSTR – 6 (ISD)	Person registered as ISD
06	20th Nov	October 24	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
07	13th Nov	October 24	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Nov	October 24	GSTR - 5A (OIDAR)	OIDAR services provider
09	25th Nov	October 24	GSTR – 3B - QRMP scheme- Monthly payment *	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

C. FEMA Compliance

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

D. Ministry of Corporate Affairs (MCA) Compliance

Sr. No.	Due Dates	Particulars	Applicable to
01	29th Nov.	Filing of Form MGT-7 Annual Return	For all 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.

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

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