BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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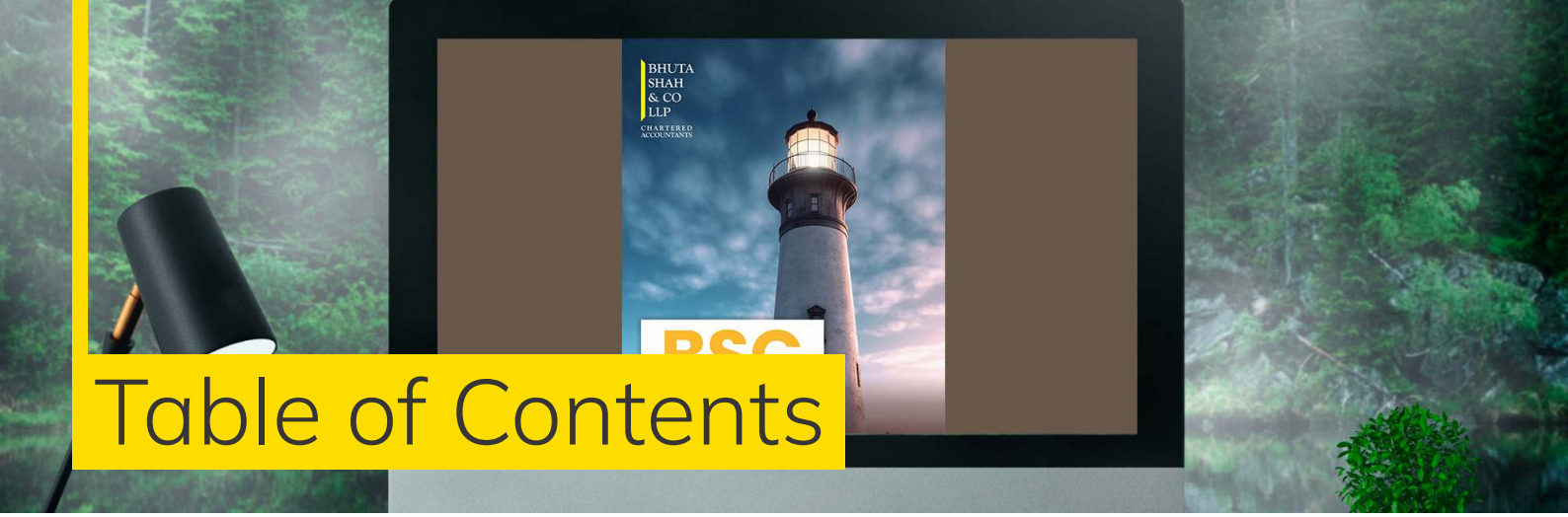

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
AE	Associate Enterprise
AIF	Alternative Investment Funds
ALP	Arm's Length Price
AO	Assessing Officer
APA	Advance Pricing Agreement
AY	Assessment Year
BRC	Bank Realisation Certificates
BRSR	Business Responsibility and Sustainability report
CBDT	Central Board of Direct Taxes
CCD's	Compulsory Convertible Debentures
CCE	Commissioner of Central Excise
CCIT	Chief Commissioner of Income Tax
CIT	Commissioner of Income-tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(IT)	Commissioner of Income-tax (International Taxation)
CPC	Centralised Processing Centre
Cr	Crores
CUP	Comparable Uncontrolled Price Method
DAPE	Dependent Agent Permanent Establishment
DCIT	Deputy Commissioner of Income Tax
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
DTVSV Act	Direct Tax Vivad Se Vishwas Act, 2020
ECB	External Commercial Borrowing
EULA	End User License Agreements
EXIM Bank	Export Import Bank of India
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FIRA	Foreign Inward Remittance Advices
FIRC	Foreign Inward Remittance Certificate

ABBREVIATION	FULL FORM
FIS	Fees for Included Services
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
FY	Financial Year
GST	Goods & Service Tax
GSTAT	Goods & Service Tax Appellate Tribunal
HC	High Court
Hon'ble	Honorable
ICDR	Issue of Capital and Disclosure Requirements
INR	Indian Rupees
IPO	Initial public offering
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income Tax Officer
ITR	Income Tax Return
JAO	Jurisdictional Assessing Officer
JCIT	Joint Commissioner of Income Tax
LIBOR	London Inter Bank Offer Rate
LNG	Liquefied Natural Gas
LO	Liaison Office
LODR	Listing Obligations and Disclosure Requirements
LTCG	Long Term Capital Gain
MAM	Most Appropriate Method
MAT	Minimum Alternative Tax
MFA	Multi Factor Authentication
MFN	Most-Favored-Nation
MOA	Memorandum of Association
NaFAC	National Faceless Appeal Center
NFAC	National Faceless Assessment Center
NPA	Non Performing Asset
NRTP	Non Resident Taxable Person
OFS	Offer for Sale
OP	Operating Profit
PCIT	Principal Commissioner of Income Tax

ABBREVIATION	FULL FORM
PE	Permanent Establishment
PLI	Profit Level Indicator
PO	Project Office
PY	Previous Year
QRMP	Quarterly Return Monthly Payment
RBI	Reserve Bank of India
ROI	Return of Income
RPT	Related Party Transaction
Rules	Income-tax Rules,1962
SB	Special Bench
SC	Supreme Court
SCN	Show cause notice
SDT	Specified Domestic Transaction
SEBI	Securities and Exchange Board of India
SLP	Special Leave Petition
SME	Small and Medium Enterprises
TC	Total Cost
TCS	Tax collected at source
TDS	Tax deducted at source
TNMM	Transactional net margin method
TO	Turnover
TP	Transfer Pricing
TPO	Transfer Pricing Officer
TPSR	Transfer Pricing Study Report
UOI	Union of India
VDA	Virtual Digital Asset
WDV	Written down Value

I. Direct & International Taxation

A. Corporate Tax

1. ***Hon'ble Supreme Court[1]:*** *When the tax liability is less than INR 50 Lakhs, reassessment proceeding has to be dropped.*

Background

Vinal Comtrade Pvt Ltd (the 'Assessee') received a notice of reassessment under Section 148A(b) of the Act for the AY 2013-14 on 27.05.2022. The Assessee filed its submission and an order under Section 148A(d) of the Act was passed and a notice under Section 148 of the Act was issued on 23.08.2022. The Assessee challenged the impugned notice and order before the Hon'ble Gujarat High Court. The Hon'ble High Court referred the decision of Keenara Industries Pvt Ltd (SCA No. 17321 of 2022 – Gujarat HC) wherein the Hon'ble High Court allowed the plea of the petitioner and quashed the reassessment notices for the AY 2013-14 and AY 2014-15. Following the said decision, the Hon'ble High Court allowed the petition of the Assessee and quashed the notice under Section 148 and order issued under Section 148A of the Act. Aggrieved by the order of the Hon'ble HC, the tax authorities filed SLP before the Hon'ble Supreme Court.

Judgment of Hon'ble Supreme Court

The Hon'ble Supreme Court held that the case of the Assessee is squarely covered by the judgment in case of Rajeev Bansal[2]. Accordingly, it held that in the cases where tax liability does not exceed INR 50 Lakhs, the reassessment proceedings has to be dropped.

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[1] Vinal Comtrade Pvt. Ltd [TS-884-SC-2024]
[2] Rajeev Bansal Vs. Union of India [TS-725-SC-2024]

2. ***Hon'ble Supreme Court[3]:*** *SLP against the order of the Hon'ble MP High Court dismissed on the taxability of rental income as business income.*

Background

M.P. Entertainment & Developers Pvt. Ltd. (the Assessee) constructed a shopping cum entertainment Mall and earned rental income from letting of shops and other space. The Assessee offered the rental income under the head "Income from business and profession" and declared the nature of business as "to carry on the business of purchase for development of the land, estates, structure and rented income from immovable properties". The Assessee claimed depreciation on the shops and other spaces and declared Nil income / losses in the ROI from AY 2011-12 to AY 2014-15.

The AO noted that only construction of portion of Mall was completed from which the Assessee was earning rental income which should have been bifurcated between "income from house property" and "income from business and profession". Accordingly, the AO passed orders under Section 143(3) of the Act for all the years by bifurcating the income and restricted the depreciation to 51.6% of the occupied space and determined the total income of the Assessee.

Aggrieved by the said order, the Assessee filed an appeal before the CIT(A). The CIT(A) passed an order in favour of the Assessee holding that the income from letting out properties in such a Mall has to be considered as Income from business and cannot be characterized as Income from house property. Aggrieved by the order of the CIT(A), the tax authorities filed an appeal before the Hon'ble Indore ITAT.

The Hon'ble Indore ITAT relied on judgements of various courts including the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Limited[4] wherein it was held that where the letting out of the property is the main object of a company, then income from letting of property is to be computed under the head "income from business" and it cannot be treated as "income from house property". Aggrieved by the said order, the tax authorities filed appeal before the Hon'ble Madhya Pradesh High Court.

The Hon'ble High Court observed the findings of Hon'ble ITAT that the main object of the Assessee as per the MOA is the business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theatre, shop, shopping mall etc. Hence, the income is liable to be categorized as income derived from the shopping mall under the head of "income from business" under Section 28 of the Act. The Hon'ble High Court noted that AO

[3] PCIT vs. MP Entertainment and Developers Pvt Ltd [(2024) 469 ITR 428 (SC)]
[4] Chennai Properties & Investments Limited v. CIT [TS-238-SC-2015]

did not find any material to show that the sub-leasing was not the main object of the Assessee and was only a part of the predominant object of the Assessee. Therefore, the CIT (A) as well as ITAT have rightly set aside the order of AO.

The Hon'ble High Court based on the above observations, held that since the ITAT is the last forum for factual determination, these findings have attained finality. In absence of any material to show that how the aforesaid findings are perverse, there was no substantial question of law in the appeal and hence the same is dismissed.

Aggrieved by the said order, the tax authorities filed a SLP before the Supreme Court.

Judgment of Hon'ble Supreme Court

The Hon'ble Supreme Court held that where the High Court has relied on the findings of the Hon'ble ITAT that the main object of the Assessee was of developing commercial properties, the income derived from the shopping mall was taxable under the head of "Income from business" under Section 28 of the Act and not as "income from house property". Accordingly, the Hon'ble Supreme Court saw no reason to interfere with the order passed by the Hon'ble High Court. The SLP is accordingly dismissed by the Hon'ble SC.

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3. ***Hon'ble Delhi ITAT[5]:*** *Allows depreciation on assets transferred to Assessee under two step restructuring excercise, rejects tax authority's plea of colorable device.*

Background

Indus Towers Ltd. ('the Assessee') was formed as a joint venture between Bharti Infratel Limited ('BIL'), Vodafone India Limited ('VIL') and Aditya Birla Telecom Limited ('ABTL') ["Operating Companies - OpCos"]. The Assessee was incorporated on 20.11.2007 with the objective of providing Passive Infrastructure (PI) support services to the operating entities and other independent telecom operators.

The Assessee filed its ROI for AY 2010-11 declaring total loss of INR 403.85 crores. In the meanwhile, Vodafone Infrastructure Limited ('VInfL'), Bharti Infratel Ventures Limited ('BIVL') and Idea Cellular Towers Infrastructure Limited ('ICTIL') ('transferor companies' or 'Tower Companies') jointly filed a scheme of arrangement ('Scheme') under Sections 391 to 394 of the Companies Act, 1956, seeking sanction of the Court for merger of the transferor companies with the Assessee. The Scheme was sanctioned by the Hon'ble Delhi High Court vide its order dated 18.04.2013 with the

[5] Indus Towers Ltd [TS-916-ITAT-2024(DEL)]

appointed date being 01.04.2009.

In pursuance of the order of Hon'ble Delhi High Court, the Assessee revised its financial statement and ROI after giving effect to merger, declaring a total loss of INR 793.20 crores under normal provision and a book profit under Section 115JB of the Act amounting to INR 469.90 crores.

The AO initiated reassessment proceedings. During the reassessment proceedings, the Assessee submitted that, the Operating Co's entered into a Framework agreement dated 08.12.2007 for consolidation of their Passive Infrastructure Assets (PIAs), which inter-alia provided a two-step restructuring with effect from 1-4-2009:-

Step 1 - Transfer of the PIAs owned by the Operating Companies to their respective Tower Companies under a Court approved scheme; and

Step 2 - Merger of the Tower Companies with Assessee under a Court approved Merger Scheme.

The Assessee also contended that as per Step 1, the Operating Companies transferred their PIAs to the Tower Companies without any consideration. Such transfer of PIA is considered as gift for the purpose of Section 43(1) of the Act. Therefore, the WDV of the assets in the hand of the transferor (i.e. Operating Companies) is considered as the 'actual cost' of such gifted asset in the hands of the recipient (i.e. Tower Companies). In respect of the above PIAs, the Assessee claimed tax depreciation of INR 1334.19 crore under Section 32 of Act.

The AO disputed the first step and disallowed depreciation of INR 1344.19 crore alleging that the transfer of PIAs from the Operating Companies to the Tower Companies was not in the nature of 'gift' and therefore, held that the benefit under Section 47(iii) or Explanation 2 of Section 43(1) of the Act cannot be taken to determine the actual cost/ tax WDV in the hands of the Tower Companies. Thus, the tax WDV in the hands of the Operating Companies cannot become the actual cost/ tax WDV in the hands of the Tower Companies and resultantly, in the hands of the Assessee. The AO concluded that this transfer of PIAs is a case of simple transfer

and the actual cost would be determined based on the actual consideration paid by Tower Companies, which is Nil. Therefore, the actual cost of PIAs in the hands of the Assessee should be Nil.

Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal of Assessee and upheld the assessment order. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before Hon'ble Delhi Hon'ble ITAT.

Decision of Hon'ble Delhi ITAT

The Hon'ble Delhi ITAT outline that the scheme cannot be challenged and questioned at the stage of implementation as it attained the statutory force not only between transferor and transferee company but also between statutory authorities. The Hon'ble ITAT emphasizes that every scheme of amalgamation and arrangement must provide for an 'appointed date' which is the date on which asset and liabilities of transferor company was transferred so that scheme comes into effect from the appointed date.

The Hon'ble Delhi ITAT held that Assessee would be entitled to claim depreciation on the PIAs earlier transferred to tower companies under the transfer scheme which was subsequently transferred to Assessee (under merger Scheme w.e.f. 01.04.2009) for the sum of Rs 1334.19 Crore. The Hon'ble Delhi ITAT noted that the initial transaction of PIAs without any consideration was duly affirmed by Hon'ble Delhi High Court while approving the demerger Scheme for one of the tower companies i.e. Vodafone Infrastructure Ltd.[6] and the same transaction qualifying as gift was confirmed by Gujarat HC in the case of Vodafone West Ltd. (earlier known as Vodafone Essar Gujarat Ltd.)[7]. The Hon'ble Delhi ITAT placed reliance on the coordinate bench decisions in Vodafone Idea Ltd.[8] and Bharti Infratel[9] and observed that the issue of gift stands accepted by the High Court and the Hon'ble Apex court while dismissing the SLP filed by the tax authorities.

The Hon'ble Delhi ITAT also stated that if benefit of depreciation is not provided to the Assessee at the value of assets which ultimately stood transferred, then none of the parties could have claimed depreciation on those assets. Based on the said observation the Hon'ble Delhi ITAT held that Assessee is eligible for depreciation allowance.

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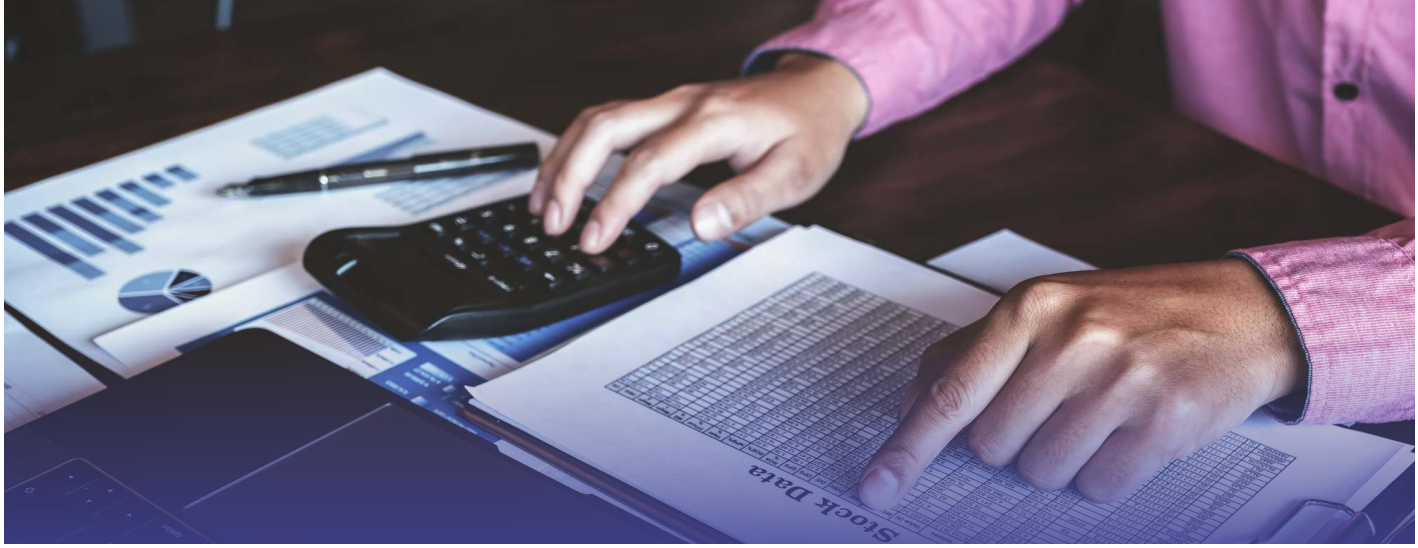
[6] Petition No 334/ 2009
[7] Petition No. 183/2009
[8] Vodafone Idea Ltd. [TS-164-ITAT-2023(Mum)]
[9] ITA 5332/Del/2014 dated 26.04.2022



4. ***Hon'ble Mumbai ITAT[10]:*** *It is not required to prove the source of the source under Section 68 of the Act.*

Background

Gauranga Papers LLP ("the Assessee"), filed its ROI for AY 2018-19 declaring income of INR 99.74 Lakhs. During the year, the Assessee had taken unsecured loans from several parties totaling to INR 1.95 crores. During the assessment proceedings, the Assessee submitted Name, PAN, address, ITR acknowledgements, loan confirmation, bank statements of the creditors, mode of loan, Form 26AS and date of repayment. Further the AO issued notice under Section 133(6) of the Act to 23 lenders, out of which 21 parties had replied directly to AO.

However, the AO held that the parties do not have creditworthiness and treated the loans as unexplained cash credits under Section 68 of the Act. Further, the AO disallowed the interest payments made on such unsecured loans.

Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) confirmed the addition making observation that the substantial portion of the loans were sourced from few individuals and concerns, which were routed through several individuals and concerns a day or two prior to the transfer to bank account of the Assessee. Also, there were no evidence of the accumulated surplus in the bank accounts of the creditors of the Assessee. Accordingly, he held that unsecured loans stands unexplained and warrants for addition under Section 68 of the Act. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

Decision of the Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT perused the submissions made by the Assessee and the observations of the Tax Authorities. The Hon'ble ITAT noted that the Assessee had submitted all necessary documentation to prove the identity, creditworthiness, and genuineness of the lenders and the loan transactions. The AO had doubted the creditworthiness without any cogent reason.

[10] Gauranga Papers LLP [TS-908-ITAT-2024(Mum)]

Relying on the decision of Hon'ble Bombay High Court in the case of Gaurav Triyugi Singh[11], the Hon'ble Mumbai ITAT held that once the source of creditor is explained and the amount was received through banking channel, without bringing any material to impeach the source of credit, addition under Section 68 of the Act cannot be made.

It also held that once the Assessee discharges the onus cast upon him, the burden shifts to the Tax Authorities to bring some material on record that the source of credit as explained by the Assessee is false. The Hon'ble ITAT clarified that the Assessee is not required to establish the source of funds of the lenders ('source of the source').

The ITAT held that the Tax Authorities did not have any other material or information to disbelieve the creditworthiness or genuineness of the transaction or to impeach the source of the credit. Consequently, the addition under Section 68 of the Act was deleted. Additionally, the interest paid on such loans was allowed. Accordingly, the Hon'ble ITAT allowed appeal of the Assessee.

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5. ***Hon'ble Mumbai ITAT[12]:*** *Reopening the assessment pertaining to the AY 2015-16 & AY 2016-17 is bad in law – followed Rajeev Bansal[13].*

AY 2015-16 – assessment under Section 143(3) of the Act was completed on 27.12.2017. Notice under Section 148 of the Act was issued on 29.06.2021 to reopen the assessment. AO has subsequently passed an order under Section 148A(d) of the Act and issued notice under Section 148 of the Act on 29.07.2022 pursuant to the directions of the Hon'ble **Supreme Court in the case of Union of India vs Ashish Agrawal[14].**

Assessee challenged the reopening of the assessment alleging the same to be time barred since the time limit to issue notice under the un-amended provisions of the Section 149 expired on 31.03.2022 i.e. six years from the end of the relevant assessment year. The CIT(A) decided the issue on merits and deleted the additions made by the AO. Against the CIT(A) order, tax authorities filed an appeal before the Mumbai ITAT and Assessee filed Cross Objections.

The Hon'ble ITAT adjudicated on the legal contention raised by the Assessee and held that, notice dated 29.07.2022 is invalid since the period of six years has expired on 31.03.2022 and therefore, notice is barred by limitation.

AY 2016-17 – notice under Section 148 of the Act was issued on 23.04.2021. AO has issued notice dated 30.07.2022 under Section 148 of the Act pursuant to the

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[11] Gaurav Triyugi Singh vs. ITO [TS-5009-HC-2020(Bombay)-O]
[12] ACIT vs Manish Financials [TS-6931-ITAT-2024(Mumbai)-O]
[13] Rajeev Bansal [TS-725-SC-2024]
[14] UOI vs. Ashish Agrawal [TS-339-SC-2022]

directions of the Hon'ble Supreme Court in the case of Union of India vs Ashish Agrawal (2023) (Supra). It was observed that AO has obtained prior approval from the Pr. CIT – 19 Mumbai before issuing notice under Section 148 of the Act as per the old regime.

Hon'ble ITAT held that, notice under Section 148 issued on 30.07.2022 is after 3 years. Therefore, prior approval should have been obtained from Principal Chief Commissioner as per the amended provisions of the Section 151(ii) of the new regime as held in the decision of the Hon'ble Supreme Court in the case of **Rajeev Bansal**. Notice issued under Section 148 of the Act is liable to be quashed since the prior approval is not obtained from the appropriate authority.

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6. *Hon'ble Mumbai ITAT[15]: Reopening of assessment bad in law where reasons for reopening is not clear on the exact nature of income escaping assessment. No addition can be made for issues not forming part of the reasons recorded.*

Background

The AO initiated reassessment proceedings for the AY 2011-12 based on the Investigation wing report that Magnetic Properties Exim Pvt. Ltd (the Assessee) was beneficiary in respect of bogus purchases amounting to INR 2.05 Crores made from two companies through an entry operator. The Assessee submitted that it has not made any purchases from the said companies but has availed loans from the said companies. However, the AO passed a reassessment order under Section 147 of the Act making an addition of INR 2.05 Crores under Section 68 r.w.S. 56 of the Act. Aggrieved by the reassessment order, the Assessee filed an appeal before the CIT(A) [NFAC] who allowed the appeal of the Assessee by deleting the impugned addition of INR 2.05 Crores.

Aggrieved by the order of the CIT(A), the tax authorities filed an appeal before the

[15] Magnetic Properties Exim Pvt. Ltd [TS-905-ITAT-2024(Mum)]

Hon'ble Mumbai ITAT. Whereas the Assessee filed a petition under Rule 27 of the ITAT Rules raising a legal contention on the validity of the reassessment proceedings.

Before the Hon'ble Mumbai ITAT, the Assessee contended that allegation made by AO on account of bogus purchases reflects that AO was not sure about the nature of income which actually escaped assessment. In support of its contention, the Assessee relied on the judgment of Hon'ble Bombay High Court in case of Hindustan Lever Ltd[16] wherein it was held that reasons once recorded by the AO, cannot be amended subsequently. Therefore, the impugned reassessment was framed without proper reasoning and liable to be quashed. Further, the Assessee contended that AO did not make the addition in the reassessment order towards alleged bogus purchases, but under Section 68 of the Act. Relying on the judgment of Hon'ble Bombay High Court in case of Jet Airways (I) Ltd[17], the Assessee submitted that AO cannot make any new addition, which was not part of the reasons recorded for reopening of the assessment, unless he makes any of the additions mentioned in the reasons. As the addition was not made in nature of bogus purchases in reassessment order, no addition under Section 68 of the Act could be made.

Per contra, the tax authorities contended that reopening of assessment was made after recording proper reasons based on the information received from Investigation Wing. The fact remains that Assessee has taken loans from the entities providing accommodation entries.

Decision of the Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT observed that it is settled position of the law that reopening of assessment can be made by AO only after recording reasons for reopening. The reasons so recorded are sacrosanct and hence, it cannot be changed later. The reassessment order reflects the addition in respect of unexplained investment, but the addition was made under Section 68 [Cash Credit] read with Section 56 [Income from Other Sources] instead of Section 69 [Unexplained Investment] of the Act. The addition towards bogus purchases should have been made under Section 28 of the Act. The discussion made in the reassessment order itself shows that AO was not clear with regard to the nature of the alleged accommodation entry availed by the Assessee from the operator. The Hon'ble ITAT took cognizance of the view adopted by Hon'ble Bombay High Court in case of Jet Airways (supra) that AO shall be entitled to make addition on any other issues not mentioned in the reasons for reopening of assessment only if he makes addition on

[16] Hindustan Lever Ltd vs. ACIT [TS-5137-HC-2004(Bombay)-O]
[17] Jet Airways (I) Ltd [TS-160-HC-2010(BOM)]

any of the issues mentioned in the reasons for reopening.

Accordingly, Hon'ble ITAT upheld the order of CIT(A) and dismissed the appeal filed by tax authorities.

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7. ***Hon'ble Indore ITAT[18]:*** *Assessment under Section 153C of the Act quashed without establishing any direct connection between incriminating material and undisclosed income.*

Background

Asnani Builders & Developers Ltd (the Assessee), engaged in the real estate business (builders and developers), entered into a Joint Venture Agreement (JVA) with Amrit Homes Pvt Ltd (AHPL) and Amrit Colonisers Pvt Ltd (ACPL) in respect of land situated at Bhopal for construction of row houses and flats under the project name 'Peeble Bay' (PB) on revenue sharing basis. On 16.05.2018, a search and seizure action under Section 132(1) of the Act was carried on the Assessee group. Pursuant to search, the AO framed assessment under Section 153C of the Act for the period from AY 2011-12 to AY 2017-18 and made additions in respect of cash receipts from customers against sales / bookings of housing plots by AHPL and ACPL in the project PB. The AO relied on the incriminating material found during the search carried out at M/s. DG Homes and Realty Pvt Ltd on 12.01.2018 [Shri Dileep Gupta – Marketing Agent of AHPL and ACPL]. The Assessee challenged the jurisdictional validity of the AO before the CIT(A) who dismissed the appeal of the Assessee. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Indore ITAT.

Before the Hon'ble Indore ITAT, the Assessee contended that the AO has recorded his satisfaction based on incriminating material found during the search of DG Homes and Realty Pvt Ltd on 12.01.2018 and not on the basis of search action conducted on the Assessee. Thus, the satisfaction note recorded by the AO is invalid. Further, the seized documents (including excel sheet from laptop of Dileep Gupta),

[18] Asnani Builders & Developers Ltd [TS-870-ITAT-2024(Ind)]

does not reflect any transaction of cash received by the Assessee. Such seized documents reflected the entries of residential units sold by ACPL and payments received from customers. The Assessee contended that even if it is presumed that cash was collected by AHPL / ACPL from customers, it would not lead to the conclusion that cash was received by Assessee. Accordingly, the assumption of jurisdiction under Section 153 of the Act is bad in law for want of conclusive satisfaction based on alleged seized material and consequential proceedings are void-ab-initio. Further, the only document which contains the name of the Assessee was seized from the residence of an employee of AHPL, but it does not pertain to the years under consideration. The Assessee relied on the case of Shailendra Sharma[19] wherein the Hon'ble ITAT held that incriminating material in the form of random sheets, loose papers, etc. are inadmissible as evidence. Also, the Assessee asserted that although the addition was made based on the statement of Dileep Gupta, no opportunity to cross-examine him was granted to the Assessee. Moreover, it was contended that as the alleged excel sheet was found in a separate and distinct search proceedings, such document falls in the category of electronic evidence. Section 65B of the Evidence Act requires that evidence in the form of electronic record can only be used in the proceedings if a certificate under Section 65B(4) of the Evidence Act is produced. However, the AO has not disputed that no such certificate was taken / available during the search proceedings at DG Homes Realty. In support of this view, the Assessee relied on decision of Hon'ble Visakhapatnam ITAT in case of Polisetty Somasundaram[20].

Per contra, the tax authorities relied on the seized material found during the search proceedings conducted on the Assessee and DG Homes. Further, the tax authorities contended that there was correlation between the two seized material leading to forming belief that documents pertains to the Assessee. It contains the transactions of cash receipts from customers against sale of residential units in PB where the Assessee was having a share in revenue as per JVA. These surrounding facts and transactions reflected in seized material are sufficient to form belief and satisfaction of AO that income had escaped assessment in the hands of the Assessee. Accordingly, the tax authorities relied on the impugned order as well the CIT(A) order.

Decision of Hon'ble Indore ITAT

The Hon'ble Indore ITAT observed that the documents seized during the search, which were used as a basis for the assessment, neither mentioned the Assessee's name, nor did it reveal any incriminating material related to undisclosed income for the relevant AYs. Relying on the judgment of the Hon'ble SC in case of Sinhgad

[19] Shailendra Sharma vs. ACIT [TS-7043-ITAT-2024(Indore)-O]

[20] Polisetty Somasundaram [TS-7302-ITAT-2023(Visakhapatnam)-O]

Technical Education Society[21], the Hon'ble ITAT emphasized that Section 153C can only be invoked if the seized material directly links to the undisclosed income of the Assessee for the relevant years. The ITAT further observed that satisfaction under Section 153C must be based on documents seized during the search and should establish a correlation with undisclosed income for the relevant assessment years. In this case, the seized material did not meet these requirements, and the tax department could not prove the Assessee's involvement in the alleged unaccounted income.

Also, the Hon'ble ITAT relied on the judgment of Hon'ble Supreme Court in case of Andaman Timber Industries[22] wherein it was held that statements obtained from third parties without giving the Assessee an opportunity to cross-examine them should not be considered as evidence. Accordingly, the statement of Mr. Dileep Gupta, the director of the search party, was found to be insufficient to prove the Assessee's undisclosed income as the statement did not mention the Assessee's name. The Hon'ble ITAT held that digital records, such as the Excel sheet taken from Mr. Dileep Gupta's laptop during search of D.G. Homes, could not be accepted as admissible evidence because the proper procedures under Section 65B of the Evidence Act were not followed. As there was no tangible evidence to support the department's claims, the Hon'ble ITAT allowed the Assessee's appeal, quashing the assessment under Section 153C of the Act on the basis that addition cannot be made on presumption.

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[21] CIT vs. Sinhgad Technical Education Society [TS-358-SC-2017]

[22] Andaman Timber Industries vs. CCE (62 taxman 3) (SC)

8. ***Hon'ble Jodhpur ITAT:*** *Gain on sale of cryptocurrency prior to 01.04.2022 chargeable to tax as "Capital Gains" and not as Income from other sources.*

Background

Raunaq Prakash Jain (the Assessee) is a resident individual and a salaried person who purchased Bitcoin in FY 2015-16 and sold it in FY 2020-21. Out of sale proceeds, the Assessee purchased a residential house property and claimed exemption under Section 54F of the Act.

The AO denied the claim of the Assessee of treating income on sale of Bitcoin as LTCG and consequent exemption under Section 54F of the Act, asserting that Bitcoin did not qualify as a "capital asset" under Section 2(14) of the Act. The AO argued that Bitcoin and other VDAs were only formally defined and taxed through the Finance Act, 2022. A crypto, unlike any other property, has no independent value or inherent utility and its value is entirely determined by what others will pay on a given day. Based on this reasoning, the gains were taxed under the head "Income from Other Sources". The Assessee challenged the assessment order before the CIT(A) who confirmed the assessment order. The CIT(A) opined that Section 115BBH of the Act (inserted by Finance Act 2022) defines the structure for taxation on sale of cryptocurrency assets at a higher rate of 30% without giving any indexation benefit or set-off of losses. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Jodhpur ITAT.

Before the Hon'ble ITAT, the Assessee submitted copy of the assessment order of Shri Ashok Kumar Asawa as well as assessment order of his father – Shri Prakash Chand Jain for AY 2018-19 wherein the AO has considered the income on sale of Bitcoin as long-term capital gains. The Assessee also contended that Bitcoin is covered under the definition of 'capital asset' as per Section 2(14) of the Act under the limb *'property of any kind held by an assessee'*.

Decision of the Hon'ble Jodhpur ITAT

The Hon'ble Jodhpur ITAT observed that prior to 01.04.2022, the Bitcoin was not defined in the Act as a property. However, the Explanation 1 to Section 2(14) of the Act clarifies that property includes any rights. Therefore, the right of the Assessee in Bitcoin, being a virtual asset is a capital asset. The Hon'ble ITAT noted that Section 45(1) of the Act stipulates that profits or gains from the transfer of a capital asset are chargeable to tax under the head "Capital Gains". Accordingly, the gains on sale of Bitcoin has to be considered as capital gains and not as income from other sources.

The lawmakers have defined the VDA in Finance Act, 2022 as an capital asset which has to be treated as income chargeable to special rates of tax.

Further, the Hon'ble ITAT observed that Assessee was not dealing in purchase / sale of Bitcoin. Rather, his only source of income was salary and invested his savings in Bitcoin. The Hon'ble ITAT also noted that intention of the Assessee was to hold Bitcoin and earn LTCG. The Hon'ble ITAT also noted the assessment orders of Shri Ashok Kumar Asawa and Shri Prakash Chand Jain. The Hon'ble ITAT relied on the judgment of Hon'ble Supreme Court in case of Vegetable Products Ltd[23] wherein it was held that when two views are possible, the view favourable to the Assessee must be considered.

Accordingly, the Hon'ble Jodhpur ITAT observed that Bitcoin qualifies as a *"capital asset"* under the definition provided in Section 2(14) of the Act prior to 01.04.2022. Consequently, the Assessee's claim for exemption under Section 54F of the Act for reinvestment was also allowed.

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9. ***Hon'ble Ahmedabad ITAT[24]:*** *Allows the FTC claim to the Assessee in AY 2008-09 despite income offered to tax in previous year.*

Background

Suzlon Energy Ltd (the Assessee), a domestic company, engaged in the business of manufacturing Wind Turbine Generators, had rendered services to its subsidiary, Suzlon Energy [Tianjin] Ltd, China [AE] during the AY 2007-08 and AY 2008-09. The royalty income has been accepted to be at ALP by the TPO during the TP assessment. However, the Assessee failed to claim the FTC for the taxes withheld by its AE while filing its ROI for both the AYs as the withholding tax certificates were received in September 2009.

The Assessee raised the claim for FTC during the assessment proceedings to seek relief from double taxation. The AO denied the claim since the FTC was not claimed in the original ROI / revised ROI. The Assessee challenged the assessment order before the CIT(A) who allowed the fresh claim, by relying on judgment of Hon'ble Supreme Court in case of Goetze India Ltd[25]. The CIT(A) allowed the appeal of the Assessee by

[23] CIT vs. Vegetable Products Ltd [TS-6-SC-1973]
[24] Suzlon Energy Ltd [TS-852-ITAT-2024(Ahd)]
[25] Goetze India Ltd [TS-21-SC-2006]

observing that FTC was denied merely on technical ground and not on merits. Hence, the CIT(A) directed the AO to allow the claim of FTC as per law. Aggrieved by the order of the CIT(A), the tax authorities filed an appeal before the Hon'ble Ahmedabad ITAT. The Hon'ble ITAT set aside the reliefs granted by the CIT(A) based on the reason that FTC claims were allowed against the MAT liability without verification of the claim and set aside the issues to the CIT(A) for de novo adjudication.

In the set aside proceedings, the CIT(A) denied the claim of FTC for AY 2007-08 based on the provision of Article 23(2) of the India-China DTAA. Article 23(2) of the DTAA states that credit is to be claimed in respect of the income for the relevant AY. Since the FTC belongs to the AY 2007-08 wherein the royalty income was offered for tax, the credit cannot be claimed for subsequent AY 2008-09. However, the CIT(A) allowed the claim of FTC for the AY 2008-09. Aggrieved by the order of the CIT(A), the tax authorities and the Assessee filed cross appeals before the Hon'ble Ahmedabad ITAT.

Before the Hon'ble ITAT, the Assessee contended that withholding certificate was received by Assessee from China in September 2009 and hence, it was not possible to claim the FTC in ROI of AY 2007-08. The Assessee relied on the decision of co-ordinate bench in the case of Sadbhav Engineering Ltd[26] wherein it was held that credit can be given in the year in which the tax is deducted even though income is not offered in that year.

Per contra, the tax authorities supported the order of the CIT(A) and requested to uphold the same and dismiss the appeal of the Assessee.

Decision of Hon'ble Ahmedabad ITAT

The Hon'ble ITAT observed that the DTAA provisions did not specify the manner in which FTC claims should be made, and hence, reliance on domestic tax provisions has to be made. Referring to Section 199 of the Act, which governs the credit for tax deducted, the Hon'ble ITAT observed that the amendment to this section w.e.f. 01.04.2008, explicitly provides that credit for TDS is to be allowed in the year in which the tax is deducted and paid to the Government. This provision applies irrespective of the year in which the income is earned or offered to tax.

The Hon'ble ITAT reviewed various judicial precedents, including the rulings in Sadbhav Engineering Ltd., (supra) Chandrashekhar Aggarwal[27], and Rangji Realities[28]. These rulings consistently upheld that the Assessee is entitled to TDS credit in the year of tax deduction and payment, as specified in the amended

[26] Sadbhav Engineering Ltd vs. DCIT [TS-6683-ITAT-2013(Ahmedabad)-O]
[27] Chandra Shekhar Aggarwal vs. ACIT [TS-8013-ITAT-2017(Delhi)-O]
[28] Shri Rangji Realities P. Ltd. -Vs- ITO [TS-5829-ITAT-2017(Mumbai)-O]

provisions of Section 199 of the Act. Applying this principle, the ITAT concluded that the Assessee's eligibility for FTC in AY 2008-09 was justified under the amended provisions.

Thus, the Hon'ble ITAT allowed the Assessee's appeal and directed the Tax Authorities to grant credit for FTC in AY 2008-09 even though the corresponding income has been offered in AY 2007-08.

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10. ***Hon'ble Kolkata ITAT[29]:*** *Claim of FTC cannot be denied merely on account of delay in filing of Form 67.*

Background

Rahul Anand (the Assessee) filed ROI for AY 2019-20 offering foreign income and claiming FTC of INR 73,658/- under Section 90 of the Act. The CPC denied the claim of FTC in the intimation issued under Section 143(1) of the Act due to non-filing of Form 67 as prescribed by Rule 128 of the Rules. The Assessee filed Form 67 after the receipt of intimation and also filed a rectification application. The rectification application was rejected by the CPC.

Aggrieved by the intimation, the Assessee filed an appeal before the CIT(A) and cited several case laws in support of the claim of FTC. However, the CIT(A) dismissed the said appeal and held that filing of Form 67 is mandatory as per law for claiming FTC. Form 67 filed belatedly was treated as non-existent under the law and the CPC has rightly denied the claim of FTC.

Aggrieved by the order of the CIT(A), the Assessee filed the present appeal before the Hon'ble Kolkata ITAT. Before the Hon'ble ITAT, the Assessee relied on the decision of co-ordinate bench in the case of Sukhdev Sen[30] wherein a similar issue was covered.

Decision of Hon'ble Kolkata ITAT

The Hon'ble Kolkata ITAT relied on the decision of co-ordinate bench in case of Sukhdev Sen (supra) wherein it was observed that Section 90 of the Act provides for

[29] Rahul Anand [TS-901-ITAT-2024(Kol)]
[30] Sukhdev Sen vs. ACIT, Circle -1, Kolkata (ITA No. 78/Kol/2014)

credit for foreign taxes to the extent of income-tax which is attributable to the income that may be taxed in the other country. It also observed that the requirement of filing Form 67 within the time limit to file ROI as prescribed in Rule 128 of the Rules is directory in nature. The Hon'ble ITAT also noted that Rule 128 of the Rules nowhere provides that if Form 67 is not filed within the specified time, the relief under Section 90 of the Act will be denied. It was further observed that the conditions prescribed may be mandatory or may merely belong to the area of procedure based on the purpose they were intended to serve. A procedural lapse on the part of the Assessee would not preclude the Assessee from claiming the FTC. Accordingly, the Assessee's claim was to be allowed.

The Hon'ble Kolkata ITAT also observed that the provisions of DTAA will override the provisions of Section 90 of the Act as they are more beneficial to the Assessee and in the absence of any express provision in Rule 128 of the Rules to preclude the Assessee from claiming FTC in case of delay in filing Form 67, there was no justification for disallowing the FTC credit.

Accordingly, the Hon'ble ITAT allowed the appeal of the Assessee.

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11. ***Hon'ble Dehradun ITAT[31]:*** *Section 269SS of the Act is applicable on acceptance of advance for transfer of immovable property and not on the consideration received on execution of sale deeds.*

Background

During the year under consideration, no business activities were carried on by Uttarakhand Enterprises Ltd ('the Assessee'). However, the Assessee had sold land to 32 individuals and has declared long-term capital gains of INR 1.84 Crores and cash in hand of INR 1.22 Crores.

The case of the Assessee was selected for scrutiny due to high amount of cash-in-hand. The AO accepted the ROI filed by the Assessee. However, the JCIT imposed a penalty under Section 271D of the Act for alleged violation of Section 269SS, citing cash transactions exceeding specified limit (i.e. INR 20,000).

Aggrieved by the impugned penalty order, the Assessee filed an appeal before the CIT(A). The Assessee contended that Section 269SS is applicable on advance/ loans/ deposits and not on final consideration received on execution of sale deed. The CIT(A) held that any cash transaction other than those pertaining to loans or advances shall also fall with the category of “Specified sum” and accordingly, dismissed the appeal of Assessee.

[31] Uttarakhand Enterprises Ltd [TS-854-ITAT-2024(DDN)]

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

Decision of Hon'ble Dehradun ITAT

The Hon'ble Dehradun ITAT relied on the decision of Hon'ble Chennai ITAT in the case of ***ITO, Kanchipuram vs. Shri R. Dhinagharan (HUF)***[32] wherein it was held that the term "specified sum" in Section 269SS of the Act does not extend to sale proceeds received at the time of property registration and should not be mistaken as 'residuary term'. The Hon'ble Chennai ITAT also referred to the Budget Speech of 2015 and Memorandum of Finance Act 2015 to rule that specified sum is restricted to advance received on transfer of immovable property and amount received on registration of sale is deed is not covered therein.

Accordingly, the Hon'ble Dehradun ITAT held that the cash transactions arising from the execution of sale deeds, did not violate the provisions of Section 269SS of the Act, which applies to advances and not sale considerations. Hon'ble Dehradun ITAT also stated that AO did not establish any contravention of Section 269SS during the assessment proceedings. Accordingly, the Hon'ble Dehradun ITAT quashed the penalty imposed under Section 271D of the Act and allowed the appeal of the Assessee.

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[32] ITO, Kanchipuram vs. Shri R. Dhinagharan (HUF) [TS-8217-ITAT-2023(Chennai)-O]

B. International Tax

1. *Hon'ble Delhi High Court[33]: Final assessment order passed in ignorance of the objections is required to be set aside.*

Background

Johnson Square Aviation Ireland Ltd (the Assessee) is engaged in the aircraft leasing business and filed its ROI for the AY 2022-23. The AO issued notice under Section 148A(b) of the Act to the Assessee to show cause as to why the lease rentals from leasing of aircrafts should not be taxed as interest income. Against the SCN, the Assessee filed its response. Subsequently, the AO passed a draft assessment order on 31.03.2024 proposing an addition of INR 499.99 Crores. Against the impugned order, the Assessee filed its objections before the DRP. However, the AO passed final assessment order on 20.05.2024. Aggrieved by the final assessment order, the Assessee filed writ petition before the Hon'ble High Court.

The Assessee contended that AO could not have extinguished its right to get the objections disposed of by the DRP, by passing final assessment order. Also, the Assessee did not receive any alert for passing of the final assessment order. Further, the Assessee relied on the judgment in case of Fiberhome India Pvt Ltd[34] and Pepsico India Holdings (P) Ltd[35], wherein, in the identical situation, the Hon'ble Court had remitted the matter to the DRP for consideration as per Section 144C of the Act. It also contended that the tax authorities are mandated to act as per the procedure laid down under Section 144C of the Act. The tax authorities have to wait till the objections filed by the Assessee is disposed of by the DRP before passing the final assessment order, even if AO has not been notified of the objections. It is well settled from the above-mentioned judgments that lack of information of the pendency of objections before the DRP cannot be a sustainable objection.

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[33] Jackson Square Aviation Ireland Limited [TS-527-HC-2024(DEL)-TP]
[34] Fiberhome India Pvt Ltd [TS-646-HC-2021(DEL)-TP]
[35] Pepsico India Holdings (P) Ltd [TS-730-HC-2023(DEL)]

Judgment of Hon'ble Delhi High Court

The Hon'ble Delhi High Court held that if the objections are submitted within time and pending before the DRP, the assessment order passed in ignorance of the said objections, is required to be set aside. Accordingly, the Hon'ble High Court allowed the writ of the Assessee and final assessment order for AY 2022-23 was set aside.

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2. ***Hon'ble Delhi ITAT[36]:*** *Absence of PE and DAPE in India – no profit attribution to India; Receipt from Indian end user/distribution to Non-resident computer software supplier for sale/resale through EULA/Distribution agreement not taxable as Royalty.*

Background

Bently Nevada LLC, (the Assessee) is a US-based company. During the year under consideration, the Assessee was engaged in the business of offshore sale of goods, software and related support services to its various customers in India. The Assessee had carried out similar activities through a Liaison Office (LO) in India. The AO treated the LO as a PE of the Assessee in India and accordingly, attributed profits to LO of the Assessee during the AY 2002-03 to 2006-07. However, the Assessee closed the operations of its LO and since then no activity was carried out at LO. Also, LO did not have any employees in India for the year under consideration. The Assessee submitted Form 49C to depict that there was no activity being undertaken by the LO and management does not intend to continue its LO and to file for closure of LO, subject to regulatory compliances.

However, the AO still treated the LO of the Assessee as its PE and accordingly, attributed the profits of the Assessee to its PE (LO) based on findings from orders passed for AY 2002-03 to 2006-07.

Also, the AO treated payments received by Assessee from Indian end-users and distributors for the resale or use of software as royalties under Section 9(1)(vi) of the Act and Article 12 of the India-US DTAA in the draft assessment order. The DRP directed the AO to verify the records and if the software was found to be embedded in the hardware itself, then the addition in respect of the royalty income was directed to be deleted. However, the AO did not comply with the directions of the DRP and reiterated the findings in draft assessment order and treated the receipts from software and support as royalty.

Aggrieved by the assessment order, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

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[36] Bently Nevada LLC vs. ACIT (IT) [(2024) 169 taxmann.com 4 (Delhi - Trib.)]

Before the ITAT, the Assessee reiterated the submissions made before the AO and contended that LO did not had any activities during the year under consideration. Also, with respect to royalties, the Assessee referred to the Supreme Court judgment in case of *Engineering Analysis Centre of Excellence Pvt Ltd.*, which held that payments for the resale or use of software through end-user license agreements (EULAs) or distribution agreements does not amount to royalties.

Decision of Hon'ble Delhi ITAT

The Hon'ble ITAT noted that the existence of a PE must be determined on a year-to-year basis under the DTAA, and past rulings cannot imply the presence of PE in continuing years.

The Hon'ble ITAT held that once the Assessee has substantiated the fact the PE does not exist with documentary evidence, then the onus to prove otherwise lies on the department. The AO failed to bring on record any proper reasoning to hold that PE existed for the year under consideration and failed to controvert the submission of the Assessee.

The Hon'ble ITAT relying on the decision of the co-ordinate bench in the case of *Nuovo Pignone International SRL* v. *DCIT* and *GE Energy Parts Inc* v. *ACIT* held that as the Assessee did not have a PE in India during the AYs in question, there was no basis for attributing profits to a non-existent PE.

Further, the Hon'ble ITAT held that payments for software embedded in the hardware does not qualify as royalties and are not taxable in India under the India-US DTAA relying on judgment of the Hon'ble Supreme Court in the case of Engineering Analysis Center of Excellence Pvt Ltd[37].

Accordingly based on the above findings, the Hon'ble ITAT allowed the appeal of the Assessee.

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3. ***Hon'ble Delhi ITAT[38]:*** *Payment for warehousing charges outside India to a non-resident not taxable as FTS.*

Background

Avtec Limited ('the Assessee') entered into a contract with M/s. ESG International Inc, US (ESGI) for warehousing facilities for storage of goods of the Assessee outside India for the period from 2007 to 2012. During the AY 2012-13, the Assessee paid the warehousing charges of INR 99.88 Lakhs to ESGI without deduction of taxes under Section 195 of the Act. During the assessment proceedings, the AO was of the

[37] Engineering Analysis Center of Excellence Pvt Ltd. [2021] 281 Taxman 19 / 432 ITR 471 (SC)
[38] Avtec Limited [TS-879-ITAT-2024(Del ITAT)]

view that scope of service include managerial / technical services and so, the payment by the Assessee was in the nature of FTS. Consequently, the AO disallowed the entire amount of warehousing charges due to non-deduction of tax. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) opined that if the Assessee wished to adopt that the payment would not a portion chargeable to tax in the hands of recipient, it is expected to approach the AO under Section 195(2) of the Act rather than taking decision on its own. Accordingly, the CIT(A) confirmed the disallowance. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble ITAT, the Assessee contended that ESGI is an independent warehouse service provider, based out of US. The payment to ESGI was made outside India for business or profession carried on outside India and for the purpose of making or earning income outside India. The payment to ESGI was made for international operation including the services like loading / unloading of material, inventory management, quality control, insurance etc. The Assessee was utilizing space for delivery of material through the warehouse to the overseas customers. There is no business activity of ESGI in India. Since the payment to ESGI was for business / profession outside India, no income is deemed to accrue or arise in India as per Section 9 of the Act. Further, the Assessee contended that an obligation to deduct tax while making payment to non-resident will arise only when such payment is sum chargeable under Section 4,5 and 9 of the Act. Also, the charging Section 4 is subject to Section 90, 91 and DTAA. In support of this view, the Assessee relied on judgment of Hon'ble Supreme Court in case of GE India Technology Cen (P) Ltd.[39] Therefore, the said payment is not taxable as per the provisions of the Act.

Also, the Assessee submitted that Explanation 2 to Section 9(1)(vii) of the Act defines the FTS to mean any managerial, technical or consultancy services. Whereas the Article 12 of India-US DTAA, FIS is defined to mean technical or consultancy services. Therefore, on joint reading of Explanation 2 and Article 12, it can be inferred that managerial services are excluded from DTAA. Even if the warehousing services are considered to be managerial services under the Act, it would not be covered under the DTAA as only the technical / consultancy services are prescribed in DTAA. Also, the DTAA provisions would cover technical / consultancy services with the condition of 'make available' of technical knowledge, experience or skill. Further, as per Section 90(2) of the Act, the provisions of the Act or DTAA, whichever is more beneficial would be applicable. In this context, the Assessee relied on the decision of Hon'ble Delhi High Court in case of Steria India Limited[40] to state that since no managerial services are in DTAA, no income is

[39] GE India Technology Cen (P) Ltd vs. CIT [TS-201-SC-2010-O]

deemed to accrue or arise in India for ESGI.

Moreover, the 'Make Available' conditions under the India-US DTAA are not fulfilled for treating the warehousing charges as FTS since there is a continuation of services on yearly basis to ESGI. The Assessee relied on the judgment of the Hon'ble Delhi High Court in case of Bio-Rad Lab (Singapore) Pte Ltd[41] for the proposition that continued provisioning and rendering of services over a substantial period of time would clearly detract from an assumption that technical or consultancy services had been 'made available'. Further, mere rendering of services would not be sufficient for being Technical or consultancy services. It has to be read along side and in conjunction with 'make available'. In this context, the Assessee relied on judgment of Hon'ble Delhi High Court in case of International Management Group (UK) Ltd[42].

Also, with respect to observation of the AO that payment to ESGI is a composite contract and the Assessee needs to apply under Section 195(2) of the Act, the Assessee relied on judgment of Hon'ble Supreme Court in case of Transmission Corporation of AP Ltd[43] wherein it was held that an application under Section 195(2) of the Act can be made before the concerned authority in a case where the payer is in doubt of taxability of payment in the hands of the recipient. However, in the instant case, the Assessee was not in doubt on taxability of said payment.

Per contra, the tax authorities supported the orders passed by the CIT(A).

Decision of Hon'ble Delhi ITAT

The Hon'ble ITAT agreed with the view adjudicated in case of GE India Technology Cen (P) Ltd *(supra)*, Steria India Limited *(supra)*, Bio-Rad Lab (Singapore) Pte Ltd *(supra)*, International Management Group (UK) Ltd *(supra)*, and Transmission Corporation of AP Ltd *(supra)*. Accordingly, the Hon'ble ITAT held that payment made by the Assessee to ESGI was not an income within the ambit of Section 9 of the Act. Also, the said payment was also outside the ambit of FTS as per India-US DTAA. Consequently, there did not deemed to accrue or arise in India any income for ESGI and hence, there is no requirement of tax deduction under Section 195 of the Act on such payment.

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[40] Steria India Limited [TS-286-ITAT-2020(DEL)-TP]
[41] IT vs. Bio-Rad Lab (Singapore) Pte Ltd [TS-5743-HC-2023(Delhi)-O]
[42] International Management Group (UK) Ltd vs. CIT [TS-474-HC-2024(DEL)]
[43] Transmission Corporation of AP Ltd vs. CIT [TS-9-SC-1999-O]

II. Transfer Pricing

1. ***Hon'ble Delhi High Court[44]:*** *Sets Aside DRP and AO's Orders passed without considering the APA.*

Background

Steelcase Asia Pacific Holdings India Private Limited (the Assessee) filed its ROI for AY 2021-22 disclosing certain international transactions. During the assessment proceedings, a reference was made to TPO for determining ALP in respect of international transaction. The TPO passed an order under Section 92CA(3) of the Act directing upward adjustment thereby determining ALP of international transaction. In the meantime, CPC has issued intimation under Section 143(1) of the Act, which was found to be incorrect by the Assessee. Therefore, the Assessee filed a rectification application against the said intimation. The AO has passed the draft assessment order after considering the TP adjustment. The Assessee has filed its objection with DRP against the draft assessment order. Subsequently, the Assessee has entered into APA and requested DRP to consider the modified return based on APA. However, the DRP passed an order under Section 144C(5) stating that pending rectification application of the Assessee be decided. The Assessee filed an application for rectification of DRP order to consider the modified return and APA. Thereafter, the AO passed the final assessment order under Section 143(3) r.w.s 144C of the Act and issued a demand notice. Aggrieved by the assessment order and DRP Directions, the Assessee filed a writ petition before the Hon'ble Delhi High Court.

Before the Hon'ble High Court, the Assessee contended that impugned assessment order and demand notice should be set aside. Per contra, the tax authorities accepted that modified return should be considered as per APA and requested the matter to be remanded to the concerned authority for fresh consideration.

[44] Steelcase Asia Pacific Holdings India Private Limited [TS-530-HC-2024(DEL)-TP]

Judgment of Hon'ble Delhi High Court

The Hon'ble Delhi High Court has set aside the final assessment order along with the DRP order and remanded the matter to the TPO for reconsideration in accordance with the directions of the APA entered by the Assessee. The Hon'ble High Court also directed that the Assessee's rectification application be duly considered.

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2. ***Hon'ble Delhi High Court[45]:*** *Upholds benchmarking of the transaction with STP units at Entity level margins.*

Background

Birlasoft Pvt Ltd ('the Assessee') is engaged in the business of developing and providing customized software services and related services. The Assessee has multiple units i.e., (3 units have been set up under the Software Technology Park Scheme ('STP Scheme'), NOIDA-I unit, NOIDA-II unit, Chennai Unit for which the Assessee has claimed deduction under Section 10A of the Act), and 2 units located overseas in Singapore and Australia. During the scrutiny proceedings, a reference to the TPO was made for determining the ALP.

The Assessee benchmarked the software development services using TNMM as the Most Appropriate Method (MAM) and selected OP/TC as the profit level indicator (PLI). The Assessee conducted its Arm's Length Analysis and derived the mean PLI of the Comparable companies at 11.7% and its own margin at 13.86%. However, the TPO conducted his own search and determined the mean PLI of the comparable entities at 14.01%. TPO then examined the unit wise operating margins of each 3 STP units in segmental accounts both with related parties and unrelated parties. The TPO also examined the operating margins of the non-STP units. The TPO concluded that the segmental accounts of the Assessee is not credible since the margins of the units with the related party were higher than the margins of the unrelated party transactions. Hence, he excluded internal CUP method as the MAM for benchmarking the transaction and accordingly determined the TP adjustment in respect of each STP units. The TPO made an adjustment in NOIDA I and Chennai Unit of INR 2.27 Crores and INR 2.68 Crores respectively and no adjustment was made in NOIDA II as the PLI was 17.01%. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A).

The CIT(A) held that the benchmarking for service development agreement should be done at entity level and not unit wise. The CIT(A) also held that the Assessee's PLI falls within the tolerable range of the mean PLI of 14.01%, as calculated by TPO.

[45] Birlasoft Pvt Ltd [TS-504-HC-2024(DEL)-TP]

Accordingly, the CIT(A) deleted the TP adjustment in respect of NOIDA I and Chennai Unit.

Aggrieved by the order of the CIT(A), the tax authorities filed an appeal before the Hon'ble ITAT. The Hon'ble ITAT upheld the decision of the Hon'ble CIT(A) on the grounds that all the 3 units had same business activities, administrative control and unity of funds. It also held that independent FAR Analysis of the units would not be possible due to common management and interlacing of funds.

Aggrieved by the ITAT order, the tax authorities filed an appeal before the Hon'ble Delhi High Court.

Before the Hon'ble High Court, the tax authorities contended that:

1. Since all the 3 units were a separate undertaking claiming deduction under Section 10A of the Act, the profits from each units were required to be calculated separately.
2. The TP Regulations should be extended to domestic transactions also. In support of this view, the tax authorities relied on the decision of the Hon'ble Supreme Court in CIT v. Glaxo Smithkline Asia (P.) Ltd[46] wherein it was held that TP regulations should not only be limited to cross border transaction but also on the domestic transactions as well especially in circumstances having tax arbitrage where profit is shifted to loss making concern.
3. That the bundling of international transactions being materially different was not permissible for the purpose of benchmarking exercise as per Section 92 of the Act. Further, as Section 92A(2)(b) of the Act uses the expression 'any person or enterprise'; the terms 'enterprise' and 'person' have different meanings and 'enterprise' could not be construed to mean a person. Accordingly, it was not erroneous in applying TNMM for determining ALP for each undertaking instead of the Assessee.

Judgment of Hon'ble Delhi High Court

The Hon'ble Delhi High Court distinguished the definition of the term 'enterprise' with respect to an 'international transaction' under Section 92F of the Act from the

[46] CIT v. Glaxo Smithkline Asia (P.) Ltd [TS-5035-SC-2010-O]

definition as per Rule 10A (aa) of the Rules. Section 92F (iii) defines an enterprise to mean a person (including its PE) whereas Rule 10A(aa) of the Rules defines an enterprise to mean an enterprise as per Section 92F and for the purposes of SDT, includes a unit, enterprise, or undertaking of business of the person. Accordingly, for an international transaction, the 'enterprise' means a person which is defined as a taxable entity [Section 2(31) read with Section 4].

The Hon'ble Delhi High Court observed that since both the Assessee and TPO have benchmarked the transaction using TNMM, there is no real dispute on the selection of the MAM. The TPO rejected the benchmarking done by the Assessee using Internal TNMM. Further, he alleged that since the profit margins of the Assessee with the unrelated party was lesser than the profit margin in International Transaction, the same was not reliable. Accordingly, he benchmarked the transaction using External TNMM. The Hon'ble High Court referred to the observation made by the CIT(A) that TPO benchmarked the unit-wise profit margin of the Assessee with entity level profit margin of comparable companies.

The Hon'ble High Court held that it would be impermissible to use comparable transactions with different parameters than that of controlled international transactions. It observed that since the agreement under which the services were rendered by the Assessee through its undertakings to its foreign AEs being the same, the transactions cannot be split between various undertakings for determination of the ALP by comparing with the profit derived by the external unrelated parties. Accordingly, the Hon'ble High Court upheld the decision of the CIT(A) and ITAT and held that determination of the ALP at unit-level instead of entity level is erroneous.

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3. ***Hon'ble Delhi ITAT[47]:*** *Rejects treatment of corporate guarantee invoked by third-party bank as loan to AE.*

Background

JE Energy Ventures Private Limited (“Assessee”) is one of the 'Venture Business' segments of the Jubilant Bhartia group. The Assessee, through its alliance with international companies, provides business, marketing and technical support related to oil and gas services, power and infrastructure services. The Assessee provided two corporate guarantee for its AE in the year 2011 and 2014. The corporate guarantees were provided in favour of EXIM Bank. The said loans were defaulted by its AE in May 2016.

Due to the default of AEs, the loans were classified as NPAs and subsequently, bankruptcy proceedings were initiated in the Amsterdam District Court. The EXIM

[47] JE Energy Ventures Private Limited [TS-522-ITAT-2024(DEL)-TP]

Bank served notice of revocation of corporate guarantees as well as counter corporate guarantees on 30.03.2016 and called upon the Assessee to pay a sum of USD 9.46 Crores [equivalent to INR 615.36 Crores]. The said amount was not paid by the Assessee and shown as contingent liability.

During the scrutiny proceedings, the AO referred the matter to the TPO and the TPO contended that on invocation of corporate guarantee, the same became a loan. Accordingly, the TPO considered it to be an international transaction and benchmarked the same arriving at arm's length carrying the fee @ 7.36% (LIBOR + 570 basis points) and proposed to enhance the income of the Assessee by INR 45.29 Lakhs. The AO passed the draft order after considering the said TP adjustment.

Aggrieved by the assessment order, the Assessee filed objections before DRP. The DRP sustained the addition. The AO passed the final order based on directions issued by DRP. Aggrieved by the final assessment order, the Assessee filed an appeal before Hon'ble Delhi ITAT.

Before the Hon'ble Delhi ITAT the Assessee contented that the invocation of corporate guarantee is a transaction between the Assessee and an unrelated entity (EXIM Bank). Therefore, provisions of Section 92A of the Act cannot be attracted on such transaction. It was submitted that the Assessee did not make any payment to EXIM Bank on account of its AE and the said amount was shown as contingent liability in the books of Assessee. Thus, the assumption of the TPO that the Assessee is liable to pay interest cost is not correct.

Per contra, the tax authorities relied on the final assessment order.

Decision of Hon'ble Delhi ITAT

The Hon'ble ITAT referred to the decision of co-ordinate bench in Assessee's own case in AY 2017-18[48], wherein it was held that once the guarantee has been invoked, there is no more international transaction in existence. Accordingly, Hon'ble ITAT opined that once the international transaction arising out of the guarantee given for the benefit of its AE goes, then what is left is a transaction between the Assessee and the EXIM Bank, which are unrelated parties.

[48] ITA No. 513/Del/2022

The Hon'ble ITAT observed that the deemed loan would be dependent on discharge of debt of AE towards EXIM Bank. As the AEs for whom the Assessee entered into a bank guarantee were not benefitted by the discharge of its debt along with liability, the same still stands. Also, no cost or expense has been allocated or apportioned by the Assessee in its books on account of invocation of guarantee. Therefore, no crystallized liability or expense had arisen for the Assessee at that time.

Accordingly, Hon'ble Delhi ITAT held that the invocation of the corporate guarantee did not automatically transform the guarantee into a loan. The Hon'ble ITAT also referred to Section 140 and Section 141 of the Indian Contract Act, 1872 which deals with the principle of subrogation with regard to the rights of a surety or guarantor. These provisions state that a guarantor's legal rights against the debtor arise **only upon actual payment or settlement.**

The Hon'ble ITAT concluded that the tax authorities erred in treating the invoked guarantee as a loan and proposing interest adjustments. Accordingly, it allowed the appeal of the Assessee and deleted the impugned TP adjustment.

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4. ***Hon'ble Ahmedabad ITAT[49]:*** *Rejects arguments of base-erosion following the SB decision in Instrumentation Corporation.*

Background

During the AY 2014-15, Shell Global Solutions International BV ('the Assessee'), provided LNG storage and re-gassification terminal services to its AE, Hazira LNG P. Ltd. ('HLPL') for INR 42.14 Crores and manpower services to its another AE, Shell India Markets P. Ltd. ('SIMPL') for INR 10.36 Crores. During the assessment, a reference was made to TPO for determination of the ALP of the above two transactions.

For the transaction with HLPL, the TPO observed that the rate of 217.56 Euro per man hour charged by Assessee for the services provided by the Assessee was lesser than the per man hour rate of 2,267.90 Euro charged to third party. Considering the third-party rate as an internal CUP, the TPO benchmarked the transaction and made an upward addition of INR 215 Crores for transaction with HLPL.

For the transaction with SIMPL, the rate of 217.56 per man hour charged to AE was less than the rate of 323.58 Euro charged to third party. Considering the third-party rate as an internal CUP, the TPO benchmarked the transaction and made an upward addition of INR 5.05 Crores for transaction with SIMPL.

Aggrieved by the TPO's additions, the Assessee filed an objection before the Hon'ble

[49] Shell Global Solutions International BV [TS-528-ITAT-2024(Ahd)-TP]

DRP. The Hon'ble DRP following the ITAT's decision and DRP's view in the Assessee's own case for earlier years on the same ground rejected the objections filed by the Assessee.

Aggrieved by the DRP order, the Assessee filed an appeal before the Hon'ble Ahmedabad ITAT.

Before the Hon'ble ITAT, the Assessee relied on the Hon'ble ITAT decision in case of Instrumentarium Corporation Ltd[50]. The Assessee contended that if the ALP of the transaction was adjusted then the corresponding expense adjustment in the hands of Indian AE would be required. This corresponding adjustment would lead to base erosion as Assessee's tax rate is 10% and the Indian AE's tax rate is 33%. The Assessee further relying on the ITAT's decision of the previous year on the principle of Mirror ALP in its own case, contended that since the benchmarking of the Indian AEs- SIMPL and HLPL was accepted by the TPO, the corresponding income of the Assessee should be accepted by the TPO.

Also, the Assessee put forth the argument that while considering the third-party rate as internal CUP for benchmarking the transaction with HLPL, the TPO made error in comparison of fixed and optional charges charged to AE vis-à-vis the fixed and optional charges charged to third party. Further, the Assessee argued that no adjustment should be made in the income of the Assessee as the income is taxable on receipt basis as per DTAA and that any ALP adjustment would not be actually received by the Assessee. In support of its contention, the Assessee relied on the decision of ITAT Special Bench in the case of Ampacet Cyprus Ltd[51] wherein the matter was remanded back to ITAT President by SB for reformulating of questions.

Decision of Hon'ble Ahmedabad ITAT

The Hon'ble Ahmedabad ITAT observed that the interpretation of the Assessee on base erosion is not tenable as per the principle laid down in the decision of Instrumentarium (supra) which states that no base erosion arises by ALP adjustment in the income of the non-resident for its transactions with Indian AEs. Further, the Hon'ble ITAT relying on the decision of Filtrex Technologies P. Ltd[52]

[50] Instrumentarium Corporation Ltd. Vs. CIT, [TS-467-ITAT-2016(Kol)-TP]
[51] Ampacet Cyprus Ltd [TS-7252-ITAT-2020(Mumbai)-O]
[52] Filtrex Technologies P.Ltd. Vs. ACIT, [TS-7056-ITAT-2018(Bangalore)-O]

rejected the argument of the Assessee on Mirror ALP on the principle that the tax authorities can determine the total income under Section 92(1) of the Act in the hands of one party considering the tax base erosion and can desist themselves in the assessment of the other party to the same transaction where no tax base erodes. For the error in the calculation of the ALP of the transaction with HLPL, the Hon'ble ITAT relying on the past judgements on the same matter in Assessee's own case restored the matter back to the TPO for fresh calculation of ALP after following the ITAT's directions of previous years. For the taxability of income on receipt basis, the Hon'ble ITAT restored the matter back to AO with the direction to apply the SB judgement (supra) and give due opportunity to the Assessee.

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5. ***Hon'ble Ahmedabad ITAT[53]:*** *Transactions between a foreign enterprise and its project office can be considered as 'international transactions' and are subject to ALP adjustment.*

Background

TBEA Shenyang Transformer Group Company Ltd (the Assessee) is a company incorporated in China and a tax resident of China. Power Grid Corporation of India Ltd (PGCIL) awarded a contract to the Assessee to build sub-stations in India comprising of offshore supply, onshore supply and onshore services vide separate agreements. The onshore service agreement required the Assessee to provide certain onshore services of inland transportation and civil work services to PGCIL within India. Pursuant to the onshore service agreement, the Assessee set up a Project Office (PO) in India to provide onshore services. The Assessee provided onshore services to PGCIL through its PO (including sub-contracting partial work to independent third-party contractors). The Assessee made / received certain payments on behalf of its PO as PO did not have any bank account in India. The AO regarded such payments as 'reimbursements', termed them as 'international transactions' and made a reference to the TPO for the AY 2012-13. The TPO opined that execution of contract by PO on behalf of the Assessee and consequent expenses was to be considered as 'international transactions' between the Assessee and its PO. Further, the TPO observed that per unit civil work rate received from PGCIL was lower than the rate paid to sub-contractor and hence, the PO was not adequately compensated for the onshore service activity and incurred losses. Accordingly, the TP provisions were applicable to the transactions between the Assessee and its PO. Being aggrieved, the Assessee filed appeal before the Hon'ble Ahmedabad ITAT.

[53] TBEA Shenyang Transformer Group Co Ltd vs. DCIT [TS-508-ITAT-2024(Ahd)-TP]

Before the Hon'ble ITAT, the Assessee contended that PO and the Assessee are not a separate enterprise and since transaction with self cannot trigger any income taxable in India, the TP provisions were not applicable to the Assessee. Further, the Assessee contended that no income arose out of the international transactions as there was only fund movement between the Assessee and the PO and actual transactions were between the PO and third parties. Further, it was also asserted that Assessee and PO were erroneously considered as 'AEs' by the TPO. The Assessee also put forth the argument that as per Article 9 of India-China DTAA, the profits derived by one enterprise would be subject to TP and ALP determination only where one of the two enterprises is a resident of India. However, in the instant case, both the Assessee and PO are non-residents. Hence, the transactions between the Assessee and the PO were not subject to TP provisions.

Per contra, the tax authorities contended that Section 92F of the Act defines 'an enterprise' as a person (including PE of such person). Accordingly, the PE of an enterprise was deemed to be an enterprise in absence of separate existence, as per the provisions of the Act. Further, the tax authorities contended that Assessee and PO were managed and controlled by the same set of persons and have contributed to its capital. The PO is fully owned by the Assessee. The directors of the PO were appointed by the Assessee. Also, it relied on the decision of co-ordinate bench in case of ADIT vs. Shandong Tijun Electronic Power Engg Co. Ltd[54] wherein it was concluded that provisions of Section 92B(2) relating to deemed international transactions are applicable in similar circumstances.

Decision of Hon'ble Ahmedabad ITAT

The Hon'ble Ahmedabad ITAT noted that in the context of a PE in India of a foreign enterprise, Article 7(2) of the India-China DTAA state that a PE is expected to make profit as if it was a distinct and separate enterprise engaged in same / similar activities. Accordingly, the Hon'ble ITAT held that PE has to be considered as a separate enterprise under the Act as well as the DTAA. Consequently, the TP provisions are applicable to the Assessee.

[54] ADIT vs. Shandong Tijun Electronic Power Engg Co. Ltd [TS-7047-ITAT-2018(Ahmedabad)-O]

Moreover, the Hon'ble ITAT referred to the definition of 'transaction' under Section 92F whereby a transaction includes an arrangement, understanding or action in concert. The arrangement or understanding between two enterprises may give rise to an income or loss and may be subject to TP provisions. In the instant case, the arrangement between the Assessee and the PO gave rise to loss in hands of PO and hence, such arrangement is subject to TP provisions. The funds of PO are controlled and managed by the Assessee. The Hon'ble ITAT relied on the decision of the Hon'ble Bangalore ITAT in case of Toyota Kirloskar Motors (P) Ltd v ALIT[55] wherein the Hon'ble Bangalore ITAT held that TP provisions are special provisions to protect the tax base of the country from being eroded and are anti-avoidance provisions of the Act. It also noted that Assessee and PO can be considered as AE if the conditions mentioned in Section 92A(2) of the Act [e.g. manufacture of goods / carrying of business by one enterprise using the technology of other enterprise as per clause (g) of Section 92A(2) of the Act] are satisfied.

The Hon'ble ITAT held that fiction in Section 92B(2) of the Act is transaction specific and does not apply to all transactions between the enterprise and person. It is up to the TPO to demonstrate as to which specific transaction qualifies as deemed international transaction.

Accordingly, the Hon'ble ITAT held that transaction between the Assessee and its PO in India can be considered as an international transaction and subject to ALP adjustment.

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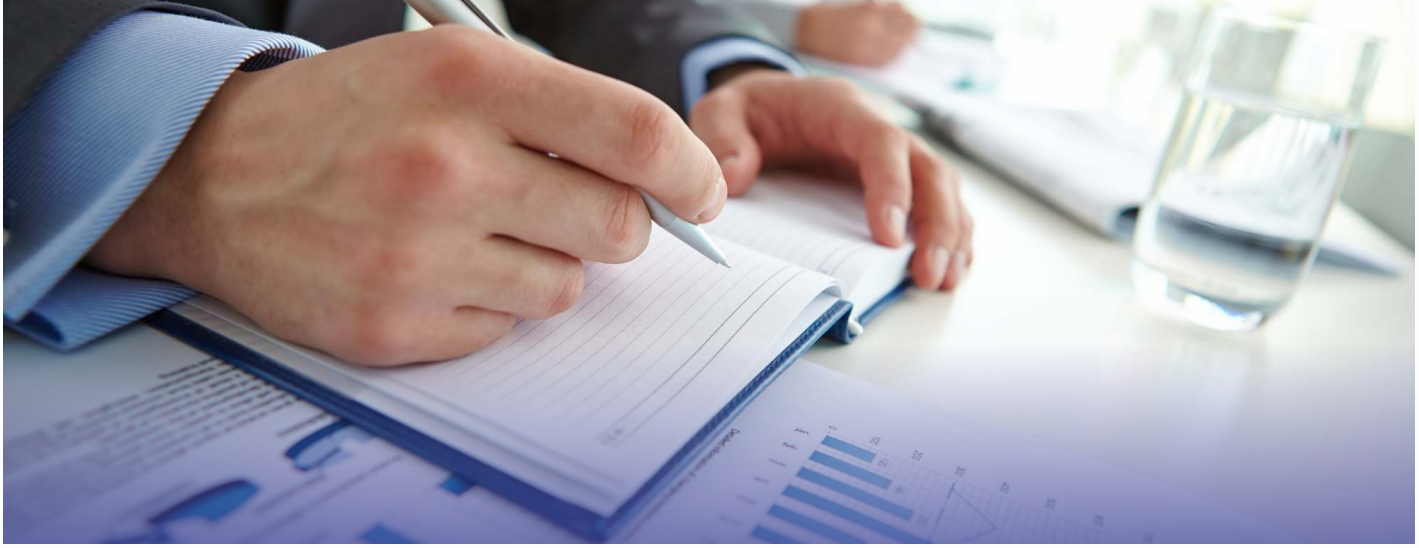
6. ***Hon'ble Chennai ITAT[56]:*** *Final assessment order passed by AO without passing draft assessment order under Section 144C(1) is bad in law.*

Background

Armstrong International Private Limited ("the Assessee") is a company incorporated in India and a wholly owned subsidiary of Armstrong Global Holdings Inc., USA. The Assessee was engaged in the business of providing products, services and engineering offerings related to various energy saving developments in generation and distribution of steam compressed air and hot water. The Assessee filed its ROI for AY 2010-11 on 30.09.2010 offering Nil income, returned loss of INR 8.17 Crores and claimed tax refund of INR 8 Lakhs.

During the scrutiny proceedings, a reference was made to TPO. The TPO made adjustments related to services rendered for brand promotion and reimbursements

[55] Toyota Kirloskar Motors (P) Ltd v ALIT [TS-732-ITAT-2012(Bang)-TP]
[56] Armstrong International Private Ltd [TS-517-ITAT-2024(CHNY)-TP]



for brand promotion. The AO passed the draft assessment order under Section 144C(1) of the Act after incorporating the TP adjustments.

Aggrieved by the draft assessment order, the Assessee filed objections with the Ld. DRP. The Ld. DRP gave certain directions to AO and consequently, the Ld. AO passed final assessment order under Section 143(3) r.w.s. 144C(13) of the Act. The Assessee filed an Appeal before Hon'ble Chennai ITAT against the final assessment order. The Hon'ble Chennai ITAT remitted back the matter to the TPO/Ld. AO for de-novo consideration. In the fresh proceedings, the TPO again proposed certain adjustments to the returned income of the Assessee. However, the AO passed the final assessment order after considering the TP adjustments.

Aggrieved by the final assessment order, the Assessee filed an appeal before CIT(A) based on the contention that passing of final assessment order by AO without passing draft assessment order under Section 144C(1) of the Act is bad in law. The CIT(A) dismissed the appeal of the Assessee and held that the AO has passed the final order for administrative convenience and held the order passed by the Ld. AO as valid. Aggrieved by the order of the CIT(A), the Assessee filed the appeal before Hon'ble Chennai ITAT.

Before the Hon'ble ITAT, the Assessee contended that the AO has circumvented the legal requirement mandated under Section 144C(1) of the Act to prepare a draft assessment order and facilitate an opportunity to the Assessee to prefer objections before the Ld. DRP. The denial of opportunity is in violation of procedure given by the statute and offends Article 14 of the Constitution of India. In support of its contention, the Assessee relied on catena of judgments[57] and reiterated that action of AO in passing impugned final assessment order is bad in law and is liable to be set aside.

Per contra, the tax authorities submitted that AO needs to only pass a draft assessment order "in the first instance" as enshrined in Section 144C(1) of the Act. Hence, the AO already gave an opportunity to file objections before the DRP earlier and this is the second round of litigation. Accordingly, there is no violation of Section 144C(1) of the Act. The tax authorities relied on the judgment of Hon'ble Madras

[57] Zuari Cement Ltd v. ACIT [WP No. 5557/2012]; Vijay Television P Ltd v. DRP [TS-5407-HC-2014(Madras)-O]; ESPN Star Sports Mauritius S. N.C. ET Campagnie v. UOI [TS-164-HC-2016(DEL)]

High Court in case of Enfinity Solar Solutions Pvt Ltd[58]. The Assessee contended that the judgment of Enfinity Solutions (supra) relied by the tax authorities was stayed by a Division Bench of the Hon'ble Madras Court.

Decision of Hon'ble Chennai ITAT

The Hon'ble Chennai ITAT observed that the AO did not follow the legal requirement of issuing draft assessment order, as per Section 144C of the Act. The Hon'ble ITAT took cognizance of the judgments relied upon by the Assessee and emphasized that when the law specifies a process, it must be followed strictly. The Hon'ble ITAT stated that it was not a small mistake but a serious violation of the law, affecting fairness and the Assessee's constitutional rights under Article 14. Accordingly, the Hon'ble ITAT held that the AO erred in passing draft assessment order and therefore, the final assessment order passed by AO is bad in law and quashed.

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7. Hon'ble Bangalore ITAT[59]: Deduction under Section 10AA of the Act confirmed on the voluntary TP adjustment pursuant to APA.

Background

EYGBS (India) Private Ltd. ("the Assessee") had claimed deduction under Section 10AA of the Act for AY 2015-16 and AY 2016-17 on the additional income offered under voluntary TP adjustment pursuant to APA. During the assessment proceedings, the AO denied the deduction under Section 10AA of the Act and made disallowance under Section 14A read with Rule 8D of the Rules. However, the AO referred to Section 92C(4), denied the deduction under Section 10AA of the Act.

Aggrieved with the assessment order, the Assessee filed an appeal before the CIT(A) and contended that the adjustments arising from APA proceedings were not covered by Section 92C(4) of the Act. Therefore, the Assessee contended that it was entitled to Section 10AA deduction and challenged the disallowance under Section 14A of the Act. The CIT(A) allowed the appeal of the Assessee. Aggrieved by the order of the CIT(A), the tax authorities filed an appeal before the Hon'ble Bangalore ITAT.

Decision of Hon'ble Bangalore ITAT

The Hon'ble Bangalore ITAT relied on the Assessee's own case for AY 2010-11 whereby it was held that ALP adjustment pursuant to APA by the Assessee resulted in increase in profits of the business of the undertaking / unit, and the increased profits are eligible for deduction under Section 10AA of the Act. Also, the proviso to Section 92C(4) of the Act is not a bar to allow such a claim.

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[58] Enfinity Solar Solutions Pvt Ltd vs. DCIT [TS-488-HC-2021(MAD)]

[59] EYGBS (India) Pvt Ltd [TS-486-ITAT-2024(Bang)-TP]

III. Goods and Service Tax

1. *55th GST Council Meeting held on 21st December 2024: Key recommendations / clarifications from the 55th GST council meeting have been summarized below:*

1. To exempt GST on gene therapy;
2. To bring supply of the sponsorship services provided by the body corporates under Forward Charge Mechanism;
3. To exempt GST on the contributions made by general insurance companies from the third-party motor vehicle premiums collected by them to the Motor Vehicle Accident Fund[60]. This fund is constituted for providing compensation/ cashless treatment to the victims of road accidents including hit and run cases;
4. To increase the GST rate from 12% to 18 % on sale of all old and used vehicles, including EVs;
5. To clarify that ready to eat popcorn which is mixed with salt and spices attracts 5% GST if supplied as other than pre-packaged and labelled and 12% GST if supplied as pre-packaged and labelled. However, when popcorn is mixed with sugar thereby changing its character to sugar confectionary (eg. caramel popcorn), it would attract 18% GST;
6. No GST is payable on the 'penal charges' levied and collected by Banks and NBFCs from borrowers for non-compliance with loan terms;
7. It is clarified that the transactions in vouchers shall be treated neither as a supply of goods nor as a supply of services;
8. To align the provisions of Section 17(5)(d) of CGST Act, 2017 with the intent of the said section, the Council has recommended amending the said section, to replace the phrase "plant or machinery" with "plant and machinery",

[60] Constituted under section 164B of the Motor Vehicles Act, 1988

retrospectively[61];

9. The GST Council took note of the procedural rules proposed for the internal functioning of the GSTAT, which would be notified after examination by the Law Committee. This would help in operationalization of the GSTAT;
10. The Council also decided to extend the time frame for the Group of Ministers on the restructuring of the GST Compensation till 30th June, 2025;
11. The Council recommended that a Group of Ministers be constituted to examine the legal and structural issues, and recommend a uniform policy on imposition of levy in case of a natural disaster/calamity in the State;
12. Clarification regarding applicability of late fee for delay in furnishing of FORM GSTR-9C and providing waiver of late fee on delayed furnishing of FORM GSTR-9C for the period from 2017-18 to 2022-23.

2 Multi-Factor Authentication (MFA) for E-Way Bill Generation

The Goods and Services Tax Network (GSTN) has announced that National Informatics Centre (NIC) will be rolling out an updated versions of the E-Way Bill and E-Invoice Systems effective from 1st January 2025. These updates are aimed at enhancing the security of the portals, in line with best practices and government guidelines.

- From 1st January 2025, MFA will become mandatory for taxpayers with AATO exceeding Rs 20 Crores,
- from 1st February 2025 for those with AATO exceeding Rs 5 Crores and
- from 1st April 2025 for all other taxpayers and users.

The advisory urges taxpayers to activate and start using MFA immediately and ensure that the registered mobile number is updated with your GSTIN. Detailed instructions are available on the E-Invoice and E-Way Bill portals. The generation of E-Way Bills will be restricted to documents dated within 180 days from the date of generation. Further, the extension of E-Way Bills will be limited to 360 days from their original date of generation.

3 Sequential filing of GSTR-7

GSTN has clarified that[62] Form GSTR-7, the monthly return required to be filed by taxpayers deducting Tax at Source, must be filed **sequentially and in chronological order[63]**. Further, the advisory also clarifies that in case when no deductions are made in any particular month, a 'NIL' return needs be filed.

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[61] With effect from 01.07.2017

[62] Vide Notification No. 17/2024 dated 27th September 2024

[63] Effective 1 November 2024

4 Advisory for waiver scheme[64]

Under the waiver scheme, for a demand notice or statement or order which has been issued under Section 73 for the tax periods between July 2017 & March 2020, the taxpayers are required to file an application either in FORM GST SPL-01 or SPL02 in GST portal accordingly.

Presently, Form GST SPL 02 is made available in the GST portal. Form GST SPL 01 will be available soon in the GST portal.

The process of filing SPL-02 electronically is made available on GST portal.

Customs Duty

5 Enabling voluntary payment electronically on ICEGATE e-payment platform

The ICEGATE e-payment has been enabled with electronic collection of voluntary / self-initiated payments. The new functionality has been envisaged to replace the existing TR-6 payments which are currently being done manually at various customs stations. This functionality shall enable the users to generate a self-initiated challan for voluntary payments and then make payments through the ICEGATE e-payment platform without any further approval by Officers of Customs.

The voluntary payment module will be accessible as a post login functionality. The users must be registered on ICEGATE to access this feature. This facility is enabled with payments which are primarily meant for import/export cleared in the past. In other words, the facility is not a replacement for challans generated by ICES/ ECCS / SEZ online / ACES applications. Therefore, it should not be used for payment of customs duties for clearance of any live consignments.

[64] Under Section 128A of CGST Act - Amnesty Scheme

2. *The services of software development, support and project management provided by Indian Entity to Overseas client cannot be considered as "intermediary service" – Karnataka High Court.*[65]

Background

The petitioner was engaged in the business of providing information and technology software and related support services both within as well as outside India. The petitioner contended that the software services and related support services to the overseas entity is rendered by developing software on its own account on principal-to-principal basis, qualifies to be export of services. Accordingly, the petitioner had filed refund claims for unutilised input tax credit of tax paid on input services for providing export services.

The refund claims were rejected by the authorities on following grounds:

a) Non-submission of Bank Realisation Certificates (BRCs) / Foreign Inward Remittance Certificates (FIRCs)

b) Foreign Inward Remittance Advices (FIRAs) mentioned the location of beneficiary as Gurgaon which is different from petitioner's location at Bengaluru

c) The purpose of remittance is mentioned as 'against inter-company receipt'

d) The invoices submitted by the petitioner mentioned that the payments are made in Bank of America Account No. 36574019 whereas the FIRAs showed the Account No as 36574085

e) The services rendered by the petitioner were 'intermediary services'

HC's Observations and Ruling:

The Hon'ble Karnataka High Court held that the services rendered by the petitioner does not qualify as 'intermediary services' and addressed the aforementioned grounds as follows:

[65] Nokia Solutions and Networks India Pvt. Ltd. Vs. The Principal Commissioner of Central tax TS 844 HC(KAR) 2024 GST

a) Non-submission of BRCs / FIRCs – the Hon'ble High Court stated that issuance of FIRC has been discontinued by Reserve Bank of India[66]. On the other hand, the petitioner produced FIRAs which would clearly establish the receipt of the export proceeds. Similarly, the petitioner had also produced the requisite CA certificates which co-related to the FIRAs already produced by the petitioner along with the refund applications. The cumulative effect of the aforesaid documents, facts and circumstances clearly establish the receipt of export proceeds by the petitioner and mere non-submission of FIRCs along with refund claim could not have been the basis for setting aside the refund sanction order

b) FIRAs mentioned the location of beneficiary as Gurgaon which is different from petitioner's location at Bengaluru – in FIRAs the location was mentioned by the petitioner as Haryana instead of Bangaluru only for the purpose of administrative convenience and the said circumstance could not be the ground to dispute receipt of foreign exchange

c) The purpose of remittance is mentioned as 'against inter-company receipt' – it was only in order to follow global finance system and the said entry would also be neither relevant nor material for the purpose of considering the refund claim

d) The invoices submitted by the petitioner mentioned that the payments are made in Bank of America Account No. 36574019 whereas the FIRAs showed the Account No as 36574085 – in this context, the HC stated that the respondents failed to appreciate that both the aforesaid accounts belonged to the petitioner and this variance in the Account Numbers was neither relevant nor material for considering refund claim

e) Whether the services rendered by the petitioner were 'intermediary services' – the HC held that a perusal of agreements entered between the petitioner and overseas entity indicates that the services provided cannot be construed or treated as intermediary services. The material on record clearly establishes that the activities of petitioner is of software development and support as well as project management rendered on its own account. It cannot be considered as intermediary services since the same are not services of arranging or segregating any other supply.

f) The Hon'ble HC accordingly concluded that the authorities have committed an error in rejecting the refund claim by passing the impugned order and SCNs which are illegal, arbitrary and contrary to the law and facts. Accordingly, the impugned order has been quashed.

[66] RBI Circular No. 74 dated 26.05.2016

3. ITC not available on sales promotion activity due to blocked credit embargo[67] – Madras High Court.

Background

The writ petition was filed by the petitioner against the orders passed by the Appellate Commissioner denying the input tax credit (ITC) availed on goods viz. "gold coins" and "T-shirts" purchased by the petitioner for sales promotion of the goods manufactured by the petitioner.

The petitioner submitted that the sales promotions are in relation to the business activity used or intended to be used in the course or furtherance of the business, as the gold coins and t-shirts were offered to intermediate dealers / retail dealers to promote the sales of the products.

HC's Observations and Ruling

The Hon'ble High Court observed that as far as denial of ITC availed on the goods purchased by the petitioner for sales promotional activities are concerned, there is an embargo under Section 17(5)(h) of the GST Act. The provision makes it clear that no input tax credit shall be available in respect of goods lost, stolen, destroyed, written off or disposed off by way of gift or free samples. The court further stated that the expression goods disposed by way of gift or free samples will specifically apply to the goods whether manufactured or traded by an assessee. It cannot be said that the petitioner is entitled to ITC for the item meant for sales promotional activity. Hence, the petitioner is not entitled to avail the ITC on T-shirts and Gold Coins purchased for sales promotional activity.

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4. The demand order merely selective "copy-paste" from the reply submitted to the SCN, thereby quashed with a direction to grant opportunity to petitioner and pass a reasoned order – Allahabad High Court[68].

Background

The petitioner was issued Show Cause Notice (SCN) for wrong availment of ITC on

[67] M/s. ARS Steels and Alloy International vs. The State Tax Officer TS 847 HC (MAD) 2024 GST
[68] M/s. Agmotex Fabrics Private Limited TS 830 HC (ALL) 2024 GST

purchase of glycerine, fatty acid and finishing chemical made up of perfumery compound. In this regard, the petitioner submitted that these materials are used as 'raw material' by the company in manufacturing process and ITC with respect to these materials has been legally availed by the petitioner. Further, the petitioner stated that the SCN was not supported with any evidence or material and the order issued is only a copy-paste of the reply given to the SCN and explanation provided therein has not been considered in a reasonable manner. Further, the petitioner submitted that the argument that the subject raw materials are used for manufacture of fabrics has not been dealt with in the order. The entire SCN and the order are speculative in nature and are based on one survey report only using which the authorities have come to a conclusion that the said items are not being used without carrying out any test for manufacture of fabrics. The explanation given by the petitioner in the affidavit annexing certificates of three experts has not been considered at all by the respondents and no reasons for rejections has been provided and also no opportunity of fair hearing was granted.

HC's Observations and Ruling

The Allahabad High Court highlighted three important factors:

1. Firstly, the impugned order merely copies the reply provided by the petitioner which leads to a conclusion that there was non application of mind by the respondent authority.
2. Secondly, in the reply to the SCN, certain documents and reports were sought for by the assessee, which had been replied upon by the authorities. However, without providing the same to the assessee, the authorities proceeded to impose the tax liability and penalty.
3. Thirdly, the explanation provided by the petitioner with regard to the use of raw materials in the process of the manufacture by the petitioner supported with opinions of experts were simply brushed aside by the respondent authority without examination

The Hon'ble High Court held that non-production of certain documents to the petitioner that were relied upon by the authorities, coupled with the manner on which no proper opportunity of hearing was granted to the petitioner leads is to the conclusion that severe prejudice has been caused to the petitioner. Hence, it was held that the impugned order cannot be sustained and is liable to be quashed and set-aside.

IV. CBDT Circulars and Notifications

1. *Guidance notes 01/2024[69] and 02/2024[70] on provisions of the DTVSV Scheme, 2024.*

CBDT issued a circular on the DTVSV Scheme, 2024 which was introduced under Chapter IV of the Finance (No. 2) Act, 2024. This scheme aims to provide a mechanism for resolving disputes related to pending income tax litigation. The primary objectives of the scheme include:

- Reducing the backlog of income tax litigation,
- Generating timely revenue for the Government, and
- Offering taxpayers peace of mind, certainty, and cost savings by avoiding prolonged and complex litigation processes.

The commencement date of the scheme has been officially notified as 01.10.2024, and the relevant rules and forms to facilitate the scheme were notified on 20.09.2024. Following the enactment of the DTVSV Scheme, 2024, several stakeholders have raised queries seeking clarity on various provisions of the scheme.

In accordance with Section 97 of the DTVSV Scheme, 2024, which empowers the Board to issue directions or instructions in the public interest, this Guidance Note has been prepared in the form of answers to FAQs. The objective of this note is to enhance taxpayers' understanding of the scheme and its provisions and to promote greater awareness. **Click here** to access the FAQ's issued through circular by income tax department.

[69] Circular No.12 of 2024 dated 15.10.2024
[70] Circular No. 19 of 2024 dated 16.12.2024

V. Recent Updates

1. *SEBI AIF Regulations - Investor Rights and Pro-Rata Contributions.*

The Securities and Exchange Board of India (SEBI) has amended the Alternative Investment Funds (AIF) Regulations, 2012 vide circular dated December 13, 2024. The amendment focuses on maintaining pro-rata and pari-passu rights for investors in AIF schemes.

- **Pro-rata rights of investors**

SEBI has updated its rules for AIFs to ensure that investors' rights are proportionate to their financial commitment in the scheme. As per the new amendment to Regulation 20(21), investors shall have rights pro rata rights in each investment and in distribution proceeds based on how much they've committed to the scheme, unless specified otherwise by SEBI.

However, for funds issued before the amendment, any arrangements where investors' rights aren't proportional to their contributions will be handled as per SEBI's guidelines.

- **Exclusions**

The above requirement shall not apply in certain cases:

A. Investment

- If an investor has been excused or excluded from participating in an investment or
- An investor has defaulted in providing his pro rata contribution for an investment.

B. Carried interest / additional returns

- Where distribution of returns to an investor vis a vis the returns shared with the AIF's manager or sponsor in terms of contribution agreement executed by them.

C. Junior/subordinate class of unit

- To accommodate investors with varying risk appetites, SEBI's new amendment

permits certain entities to accept lower returns or take on higher losses than their proportional share in AIF investments. The entities who can subscribe to junior/subordinate class of unit is as follows –

i. AIF's manager or sponsor,

ii. Multilateral or bilateral development financial institutions,

iii. State industrial development corporations, and

iv. Entities established or owned or controlled by the Central Government or a State Government or the Government of a foreign country, including Central Banks and Sovereign Wealth Funds; in all cases of Junior/subordinate units it shall be insured that amount invested by the AIF is not utilized by an investee company, directly or indirectly to repay any obligations or liability of the manager or sponsor of AIF

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2. SME Framework under SEBI (ICDR) Regulations, 2018 and Corporate Governance Provisions under SEBI (LODR) Regulations, 2015.

The Securities and Exchange Board of India (SEBI) has announced vide its board meeting held on December 18, 2024, certain changes to the Business Responsibility and Sustainability report (BRSR) SEBI (ICDR) Regulations, 2018, and SEBI (LODR) Regulations, 2015, to strengthen the framework for public issues by SMEs.

BRSR

1. Deferred ESG disclosure for value chain by 1 year i.e, with effect from F.Y 25-26
2. ESG disclosure shall be voluntary; reporting of previous number will be voluntary in case of first year.
3. Reduce the scope of value chain to cover the top upstream and downstream part of the listed entities.

SEBI ICDR Regulations and LODR regulations

These changes aim to provide SMEs with a chance to raise funds and get listed on stock exchanges while ensuring investor protection. The amendments will support SMEs with a solid track record in accessing public capital markets. These changes include the following:

1. An issuer can launch an IPO only if it has an operating profit of at least Rs. 1 crore for two out of the last three financial years, at the time of filing its draft red herring prospectus (DRHP).

2. In SME IPOs, the Offer for Sale (OFS) by selling shareholders cannot exceed 20% of the total issue size, and no shareholder can sell more than 50% of their holdings.
3. Promoters' shares beyond the minimum required contribution will be locked in and released gradually: 50% after 1 year and the remaining 50% after 2 years.
4. The allocation process for non-institutional investors (NIIs) in SME IPOs will now follow the same methodology as that used for NIIs in main board IPOs.
5. In SME IPOs, the amount allocated for General Corporate Purpose (GCP) will be capped at 15% of the funds raised or Rs. 10 crores, whichever is lower.
6. SME IPOs will not be allowed if the proceeds are used to repay loans from promoters, promoter groups, or related parties, either directly or indirectly.
7. The DRHP of an SME IPO will be available for public review for 21 days, with a public announcement in newspapers featuring a QR code for easy access to the document.
8. SME companies can raise further capital without having to migrate to the Main Board, provided they comply with the SEBI (LODR) Regulations, 2015, applicable to Main Board-listed companies.
9. Related party transaction (RPT) rules for Main Board-listed companies will now apply to SME-listed companies, with material RPTs defined as those exceeding 10% of annual consolidated turnover or Rs. 50 crores, whichever is lower.

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3. Switzerland to suspend MFN Clause for India under DTAA from 1 January,2025.

From 1 January, 2025, Switzerland will raise the withholding tax rate on dividend income for Indian investors from 5% to 10%. This follows Switzerland's suspension of the MFN clause with India regarding dividend income under the India-Switzerland DTAA.

The decision stems from a Supreme Court of India ruling in case of 'Nestlé SA'[71] in 2023, which rejected the interpretation of the MFN clause in India's DTAAs with Switzerland, the Netherlands, and France.

[71] Nestle SA [2023] (458 ITR 756) (SC)

4. Key highlights of Press release - IFSC FME regulations

Parameter	As per new regulation	As per old regulation	Impact on the industry
Non retail scheme - Corpus	Minimum corpus of scheme is USD 3 million. Open ended scheme can commence investment activities on achieving USD 1 million.	Minimum corpus of scheme was USD 5 million.	Corpus limit aligned in light of limits applicable to Indian AIFs
Validity of PPM	12 months from IFSCA's communication.	6 months from IFSCA's communication	Provides greater flexibility to FME managers to launch new schemes.
Contribution by FME / its Associate(s) in a scheme	Permitted up to 100%, subject to the following conditions: A. the FME / its Associate that invests in scheme and their UBOs are persons not resident in India, and Such scheme shall not invest more than 1/3rd of its corpus in any 1 company & its associates.	Contribution by FME / its Associate(s) in a scheme, presently restricted at 10%	Flexibility to set up a proprietary fund for Non resident investors subject to fulfilling investment conditions.
Restriction on related party transaction.	B. Schemes will be restricted from buying or selling securities from associates, other schemes of the FME or its associates, or a major investor (who has committed to invest at least 50% of the corpus of the scheme), unless prior approval has been obtained from seventy-five percent (75%) investors in the scheme by value, wherein the major investor shall be excluded from the voting process if the transaction is with the major investor	Scheme may invest in its associate subject to prior approval of 75% investors in the scheme by value	Tighter governance norms introduced for transaction with major investors.
Valuation of scheme's assets	**Independent** service provider is exempted from valuing a fund of funds scheme if the underlying fund has already been valued by an independent service provider.	Assets of the scheme may be valued by an independent third-party service provider such as a fund administrator or custodian registered with the Authority,	Reduction of operational costs and lowers the burden of compliance.

Parameter	As per new regulation	As per old regulation	Impact on the industry
Provision of joint investment	A provision for joint investments by 2 individuals with specific relationships is provided for non-retail schemes.	Only single investor permissible.	To encourage higher participation from investors.
Manpower requirements for FMEs	1. FMEs no longer need prior approval from IFSCA for appointing KMPs, but must notify them. 2. FMEs with an AUM of at least USD 1 billion (excluding fund of funds) must appoint an additional KMP. 3. Retail FMEs must meet the additional KMP requirement before filing a Retail Scheme or ETF with IFSCA. FMEs' employees must undergo certifications from specified institutions to maintain competence.	1. Prior approval for appointing KMP was required. 2. Additional KMP was required for all registered FMEs. 3. No time frame was prescribed for appointment of additional KMP.	Regulatory process streamlined to reduce administrative inconvenience and improve overall governance framework.
Registered FME and Retail schemes.	4. Criteria of 5 years of experience in managing AUM of USD 200 million and 25,000 investors can now include the experience of the FME, its holding company, or their subsidiaries.	Similar experience required at FME + holding company level.	• Streamlining regulatory framework to promote ease of business.
	• The FME shall have person(s) with more than 25% shareholding in the FME, each carrying on activities related to fund management, including portfolio management, wealth management, distribution of financial products, and investment advisory, for a period not less than 5 years, collectively for at least 1,000 investors on assets of at least USD 50 million, and The FME has a net worth of USD 2 Million or such other net worth as may be specified by IFSCA.	Similar conditions with AUM criteria being USD 200 million.	Streamlining regulatory framework to promote ease of business.

Parameter	As per new regulation	As per old regulation	Impact on the industry
Minimum size of the retail schemes.	Minimum corpus requirement is USD 3 million. For open-ended schemes, investment activities can begin with a corpus of USD 1 million, with the full USD 3 million required within 12 months.	Minimum corpus requirement was USD 5 Million.	Lowers entry barriers, encourages more market participants, increases operational flexibility.
Investment in a single company	Investment cap in a single company for sectoral, thematic, or index schemes is based on the company's weight in the benchmark index or 15%, whichever is higher.	Retail schemes can invest up to 10% of AUM in a single company, or 15% after seeking specified approval.	Provides more flexibility.
Minimum investment for PMS	150,000 USD	75000 USD	Limit aligned in light of investment limits applicable to domestic PMS
Pending deployment of money	For Non-Retail and Retail Schemes, pending deployment of funds, money can also be invested in bank deposits and overnight schemes.	FME may invest money in certificate of deposits, units of investment schemes such as liquid or money market schemes, money market instruments or any other securities or financial assets or instruments as may be specified by the Authority	Greater flexibility provided. Retail schemes can invest up to 10% of AUM in a single company, or 15% after seeking specified approval.

The detailed amendments will be incorporated in due course. In case you require any clarification/ assistance in relation to the above please feel free to reach out to us.

VI. Compliance Calendar Jan. 25

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Jan	December 2024	TDS / TCS Payment	Non-Government Deductors
02	15th Jan	Qtr. -3 (Oct-Dec 24)	Furnishing the Form 15G/15H	All individuals
03	15th Jan	F.Y. 2023-24	Belated/ Revised Return*	All resident individuals
04	30th Jan	Qtr. -3 (Oct-Dec 24)	TCS Certificate	All Deductors
05	31st Jan	Qtr. -3 (Oct-Dec 24)	TDS Certificate	All Deductors

* Note: The Central Board of Direct Taxes has extended the last date for furnishing a belated/ revised return of income for the Assessment Year 2024-25 in the case of resident individuals from 31st December 2024 to 15th January 2025 vide Circular no. 21/2024, dated 31-12-2024.

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Jan	December 2024	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Jan	December 2024	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Jan	December 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 Jan	December 2024	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th Jan	December 2024	GSTR – 6 (ISD)	Person registered as ISD

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
06	20th Jan	December 2024	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	20th Jan	December 2024	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Jan	December 2024	GSTR - 5A (OIDAR)	OIDAR services provider
09	25th Jan	December 2024	GSTR – 3B - QRMP scheme- Monthly payment *	Aggregate Turnover is up to Rs. 5 crores
10	25th Jan	December 2024	PMT-06	For those taxpayers who are availed the Quarterly Return Monthly Payment (QRMP) option

* i - 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.

*ii - 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 Jan.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

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

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

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