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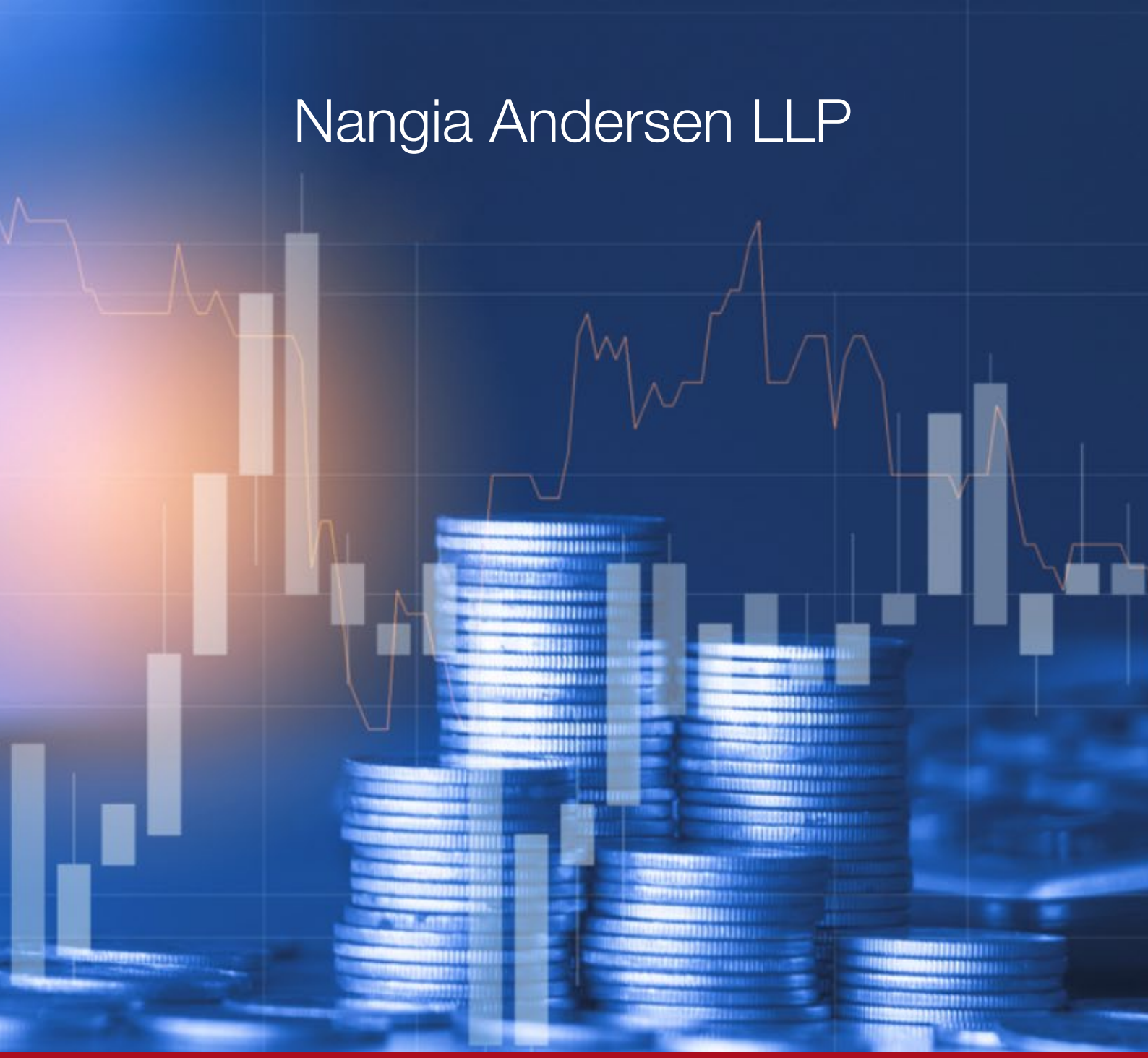

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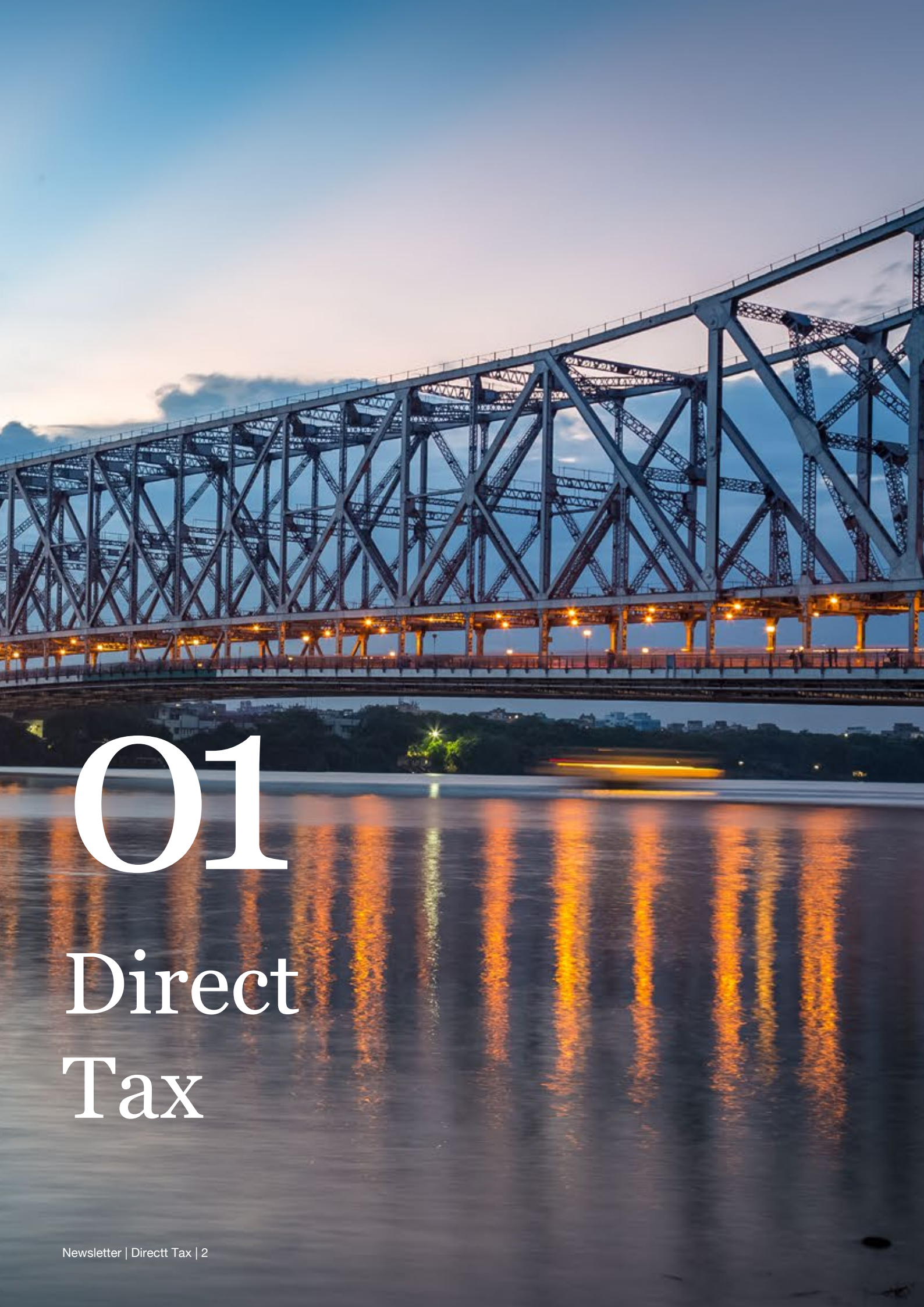


01 Direct Tax

Jaipur ITAT holds that sales and marketing expenses paid by the assessee to its non-resident agent not FTS, not liable to TDS under section 195

Issue - Fee for Technical Services (FTS)/ TDS under section 195
Outcome - In favor of the Assessee

Background

In a recent deliverance, the Jaipur Bench of Income Tax Appellate Tribunal (ITAT) rendered its decision that sales and marketing expenses paid by Prime Oceanic Private Limited (the assessee) to its non-resident agent in UAE were not liable to TDS under section 195 as the sum paid did not fall under the scope of 'total income' and in the absence of Permanent Establishment (PE) in India, no business income can be charged to tax in India. Accordingly, disallowance u/s 40(a)(i) made by the revenue could not be sustained.

Brief Facts and Contentions

- The Assessee is a commission agent in the business of providing shipping services at various ports located across the world.
- The assessee availed sales and marketing services of M/s Trans Coral Shipping FZE, a non –resident company incorporated in UAE and for the assessment year 2013-14, claimed the amount paid to the non-resident as expense.
- During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had failed to comply with the TDS requirements under section 195, to which the assessee submitted that the payments were made for procuring business outside India and no technical services were involved. Also, the non-resident entity's income was not subject to tax in India. Accordingly, the payment of sales and marketing expenses was not liable to tax withholding requirements.
- The AO alleged that the assessee was engaged in joint venture business with M/s Trans Coral Shipping FZE and crediting of sales promotion expenses was a sham transaction used for tax avoidance. It was distribution of income, in substance, and not an expense.
- On perusal of agreement between the assessee and the non-resident entity, the AO further noted that 10% of total commission receipt was to be shared in addition to one-third of the commission, in case total commission received by the assessee exceeded Rs.50 Lacs.
- Accordingly, the AO disallowed the expenses claimed in this respect.
- Aggrieved, the assessee preferred an appeal before CIT(A), who upheld AO's view stating that income of non-resident shall be deemed to accrue or arise in India as per Section 9(1) (v)/(vi)/ (vii) of the Act, irrespective of any business connection or rendering of services in India.
- The assessee then moved his appeal before the ITAT.

ITAT's Judgement

- The ITAT analyzed section 195, 40(a)(i) and related circulars and pointed out that tax is required to be deducted at source under section 195 only if the amount paid is 'chargeable to tax' in India.
- On perusal of agreement, ITAT observed that M/s Trans Coral Shipping FZE was appointed as a service provider with a view to endorse the activities and services of the assessee in return for 1/3rd commission share on commission received by the assessee and an additional incentive of 10% of commission where total commission earned by the assessee exceeded Rs 50 lacs. In view of the terms of agreement, ITAT concluded that

- The relationship between the two companies was that of Principal and Agent and not of joint venture partners, which carries different attributes in terms of sharing responsibilities, risk and rewards.

- The method of computation of commission as per the agreement cannot be the sole determinative of a joint venture and is a mere mode of determination of fee as agreed between the two companies.

- ITAT remarked that provisions of section 9(1)(vii) were not attracted as the assessee company had utilized the services of the non-resident entity outside of India for the purposes of earning commission income from customers and shipping companies outside of India.

- Based on the facts on record and above observations, ITAT ruled that payments made by the assessee to the non-resident entity did not fall within the scope of total income and were hence not 'chargeable to tax' in India. Further, in the absence of PE in India, during the relevant assessment year, business income could not be charged to tax in India. Accordingly, assessee was not liable to deduct tax under section 195 and therefore disallowance under section 40(a)(i) made by the revenue could not be sustained.

- Separately, the ITAT explicated that in case of a non-corporate assessee, there cannot be any personal expenditure. Where the directors of the company have profited from use of vehicles and incurrence of other expenditure, the same shall be taxed as perquisites in their individual hands. Accordingly, the ITAT also rejected revenue's disal lowances with respect to certain expenses claimed by the assessee as business expenses.

Nangia Andersen LLP's Take

Ruling in favor of the assessee, the ITAT in this case has highlighted that tax is required to be deducted at source under section 195 only when the amount paid is 'chargeable to tax' in India. The ITAT noted that the source of assessee's income for which the services were utilized was outside India and the services were also rendered outside of India, thus the income cannot be deemed to accrue/ arise in India. Further, the ITAT explicated that in the absence of PE in India, business income of non-resident could not be brought to tax in India. Accordingly, in the absence of any chargeability, no tax was required to be deducted at source.

Past Precedents

In the case of GE India Technology Centre Private Ltd[1], the Supreme Court held that any payments made to non-residents will be subject to withholding tax only when such payments are chargeable to tax in India.

[Source- ITA No. 652/JP/2019]

[1] GE India Technology Centre Private Ltd Vs CIT (2010) 327 ITR 456(SC)

Ahmedabad ITAT holds that foreign nationals on deputation do not constitute Supervisory or Dependent Agent PE when they exclusively worked as the employees of the Indian AE

Issue: Permanent Establishment (PE)
Outcome: In favor of the Assessee

Background

In the case of Lubrizol Advanced Materials Inc. (the assessee), the Ahmedabad ITAT noted that the deputed foreign nationals worked exclusively for the Indian Associated Enterprise (AE) of the assessee. The salary of these employees was paid by the AE. Therefore, they were the employees of the AE and accordingly reimbursements made to the assessee in respect of their salaries could not be attributed to the income of Supervisory PE of the assessee. Further, there was no connection between the deputed personnel and the assessee, which could create Dependent Agent PE (DAPE) in India.

Brief facts and contentions

- The assessee is a foreign company based in USA. It has an AE, M/s LZAM India, which was in the process of establishing a new manufacturing plant in India. It entered into an intercompany services agreement with the assessee for obtaining engineering, technology, design and project supervisory services.

- The agreement required the AE to pay actual cost plus markup @ 10% to the assessee as consideration. The assessee sent its personnel to India for supervising the project. This arrangement between the assessee and its AE created "Supervisory PE" of the assessee under clause 5(2)(k) of the India-USA tax treaty. Accordingly, the assessee filed its return of income declaring income therefrom.

- However, the Assessing Officer (AO) observed that remuneration of two personnel Mr. Timothy Earl Madden (Tim) and Mr. Mathew Scott Timmons (Matt) who were involved in providing supervisory services, was partly reimbursed by the AE to the assessee but was not considered in the income of the assessee's supervisory PE.

- The assessee explained that Tim and Matt were not its employees and did not render any services with respect to the Supervisory PE in India. They were seconded to the AE as full-time working employees. Their salary was paid by the AE. For mere administrative ease, part of their salary was paid by the assessee in the USA. However, the same was reimbursed by the AE on cost to cost basis. AE had duly deducted taxes on the salary paid to these employees and also on the amount reimbursed to the assessee. The employees had also offered their income to tax in India.

- However, the AO found that Mr. Tim had been designated as Managing Director of South Asia on the assessee's website which implied that he was working with the assessee. The personal profile of both the employees demonstrated that they were highly skilled and specialized and had been

working at different locations across the world as employees of the assessee. Besides, the assessee, in the earlier assessment year had itself acknowl edged that Mr. Tim and Mr. Matt were visiting India for supervisory purposes in connection with the manufacturing plant in India. The AO deduced that Tim and Matt were working in supervisory capacity on behalf of the assessee and therefore added their salary (including the amount reimbursed by the AE to the assessee) to the income of the supervisory PE of the assessee.

- The AO also noted that the assessee in the relevant year had sold certain goods to the AE, in pursuance of a purchase agreement that was signed by Mr. Tim and Mr. Matt on behalf of the AE. It was held that the two employees formed a DAPE of the assessee in India.

- Aggrieved, the assessee preferred an appeal to the DRP, which disregarded the assessee's contentions. The assessee then plead his case in an appeal before the Ahmedabad bench of ITAT.

ITAT's Judgement

- The ITAT noted that salary of both the employees was paid by the AE and applicable taxes had been duly deducted. Form-16 (TDS certificate) was also issued in this regard and employees filed their return of income in India.

- The terms of the agreement provided that the deputed personnel would be the employees of the AE and would work under the supervision and guidance of the AE in India. The AE was responsible for paying salary and other benefits to the deputed employees. For convenience, it was agreed that part of the salary will be paid in foreign currency but the amount would be decided by the AE in India in accordance with the rules and regulations applicable in India.

- The above facts were not disputed by the Revenue. Further, no adverse inference could be drawn against the assessee merely on the basis of the *information displayed on its website. Information displayed on website cannot precede the documents which are available on record for deciding the issue*. Accordingly, the ITAT directed the AO to delete the additions made to the income of Supervisory PE of the assessee.

- Further, ITAT held that Tim and Matt were employees of the AE and signed the purchase agreement as authorized signatory of the AE, thus, it could be concluded that there was no connection with the Assessee to constitute DAPE. ITAT remarked that *"the whole basis of treating the sale/ purchase transaction as attributable to DAPE is not sustainable"*

Nangia Andersen LLP's Take

In the instant ruling, the ITAT has established that foreign nationals working exclusively for foreign entity's Indian AE do not constitute supervisory PE/ DAPE of the foreign entity in India. The ITAT relied on documents such as employment agreements and agreement for reimbursement of employee cost, TDS certificates etc. which proved that the employees worked exclusively for the Indian AE and not the assessee. Therefore, the ruling highlights the importance of maintaining proper documentation.

Past Precedents

In the case of Centrica India Offshore Pvt. Ltd[1]., the Delhi HC distinguished between the economic employer and the legal employer. The assessee had sought some employees on secondment from an overseas entity. The seconded employees had to work under the supervision and control of the assessee. The assessee reimbursed the salary cost of the seconded employees to the overseas entities on cost-to-cost basis and also withheld and paid tax in India on the salary paid to the seconded employees. However, employment contract between the secondees and the overseas entity was not terminated and all costs of seconded employees were ultimately borne by the overseas entity. In view of this fact, the Court decided that the overseas entity constituted Service PE in India.

[Source-ITA No. 2455/AHD/2018]

[1] Centrica India Offshore (P.) Ltd. v. CIT [2014] 364 ITR 336 (Del)

ITAT holds that Morgan Stanley's income from IDRs would be exempt under Article 22 of the India-Mauritius Tax Treaty

Issue: Taxability of Income from Indian Depository Receipts (IDRs)
Outcome: In favour of the assessee

Background

In case of Morgan Stanley Mauritius Co. Ltd. (the assessee), the Mumbai ITAT assessed the taxability of income arising from IDRs. The ITAT ruled that the IDR dividend received by the assessee could not be taxed in India in accordance with the beneficial provisions stated under Article 22 of the India-Mauritius DTAA.

Brief facts and contentions

- The assessee is a company incorporated and fiscally domiciled in Mauritius. It was also a Mauritius tax resident.
- The assessee invested in the Indian Depository Receipts (IDRs) issued by Standard Chartered Bank- India (SCB-India) with the underlying asset in the form of shares in a UK based company "Standard Chartered Bank Plc." The custodian for this investment was Bank of New York Mellon, USA (BNY-US). The shares of Standard Chartered Bank-UK (SCB-UK) were listed on London stock exchange and the IDRs were listed on the Indian Stock Exchange.
- During the assessment year 2015-16, the assessee received INR 9.74 crores from Standard Chartered Bank- India as dividend on the underlying shares related to investments in IDRs. The proceeds were received outside India and subsequently remitted to the Indian bank account of the assessee.
- The assessee submitted that the dividend receipts were not to be subjected to taxation in India as the dividends were in respect of shares of a foreign company "SCB-UK" and were received abroad by another foreign company "BNY-US". These dividends did not accrue or arise in India and were not received or deemed to be received in India. The receipts were merely remitted in the Indian bank account.
- Further, the assessee contended that the dividend received did not fall within the scope of the definition of 'dividends' stated under Article 10 of India-Mauritius DTAA. Instead, Article 22 pertaining to 'other income' which provides for exclusive taxation in the residence jurisdiction, (i.e., Mauritius in assessee's case) was required to be considered.
- However, the Assessing Officer (AO) averred that India was the first point of receipt of dividend when deposited in banks. The Red Herring Prospectus of the IDR issue stated that dividends paid to a Non-Resident IDR holders shall be subject to taxes in India if received or deemed to be received in India. Accordingly, it was proposed that the dividends be taxed at 20% plus applicable surcharges and cess as per section 115A(1)(a).
- When the assessee raised objections before the Dispute Resolution Panel (DRP), it rejected assessee's contention stating that dividend was covered by Article 10 of the India-Mauritius DTAA since the company distributing dividend is a resident in India for the purposes of Article 10. Therefore, dividend was taxable in India.
- Aggrieved, the assessee filed an appeal before the Tribunal.

ITAT's Judgement

- The ITAT analyzed the true nature and meaning of "Indian Depository Receipts". It observed that the IDRs provide a mechanism in which an investor in the Indian market can have the benefits flowing from the shareholding in participating foreign companies. Conversely, IDRs are means of tapping the Indian investor market by the foreign companies.
- ITAT observed that dividend physically flows from SCB-UK to BNY-US, which was only a custodian and the actual recipient was SCB India because shares were held by SCB-India through the custodian. Further, as SCB-India had issued the IDRs on the basis of shares in SCB-UK (underlying asset), the benefits of the asset went to the IDR holders.
- Section 9(1)(i) of the Income Tax Act provides that all incomes accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any assets or source of income in India is deemed to accrue or arise in India. In accordance with these provisions, there was a business connection between the dividend income and India. "SCB-India" was the Indian depository of the

underlying shares and these shares constituted property of the Indian depository. The IDRs were also listed on Indian stock exchange and the entire management and operations of the depository was from India.

- Section 9(1)(iv) of the Income tax Act states that dividend paid by an Indian company outside India shall be deemed to accrue or arise in India. Although the dividend was not paid by an Indian company, the Revenue rightly pointed out that section 9(1)(iv) does not start with a non-obstante clause or restricts the scope of section 9(1)(i) of the Act. Accordingly, dividend income other than that from an Indian company which cannot be taxed under section 9(1)(iv), can be taxed under section 9(1)(i) of the Income Tax Act. Consequently, the receipt of dividend by the assessee shall be considered as income deemed to be accruing or arising in India.

- The point of time when income accrues to the IDR holders is when the Indian depository declares the outgo and is received when the Indian depository pays the money.

- However, taxation of non-residents in India is subject to relief under relevant tax treaty. Article 10-"Dividend Income" of the India-Mauritius DTAA provides that dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State." Given the facts of the case under consideration, the dividends could be treated as having been paid either by SCB-UK (a company incorporated in and fiscally domiciled in UK) or by SCB-India (the Indian branch/ PE of the UK bank), neither of which can be treated as 'residents' of contracting states for the purpose of India-Mauritius Treaty. Thus, dividend cannot be subject to tax under Article 10 of the treaty.

- The provisions of Article 22-"Other Income" were to be considered instead. For periods prior to 1 April 2017, Article 22 stipulated that the residuary income i.e. income not expressly covered by any of the specific DTAA articles or provisions and the exclusion clause Article 22(2) could be taxed only in the "State of residence" of the assessee. Therefore, as the provisions under Article 22 were more beneficial to the assessee, the dividend income was not to be taxed in India i.e. the source jurisdiction.

- ITAT concluded that dividends from IDRs held by the taxpayer were not taxable under the DTAA. However, given the amendment to Article 22, the decision only applies to payments before April 1, 2017.

Nangia Andersen LLP's Take

The Mumbai ITAT analyzed in-depth the taxability of IDR dividend income under the Income Tax Act and the India-Mauritius tax treaty. This is a significant ruling for Foreign Institutional Investors (FIIs) and other overseas investors and shall accord clarity on tax implications on income received on IDRs.

The Indian Tax Laws do not prescribe a distinct framework for taxation of income from IDRs. However, dividends earned from IDRs would be deemed to be received in India and consequently be taxed under the provisions of the ITA. In case of non-resident assessees, relief, if available, under the relevant tax treaty shall be available.

In the instant case, owing to Article 22 of the India-Mauritius tax treaty which provides for taxation in the "State of Residence" of residual incomes pertaining to periods prior to 1st April 2017, the ITAT ruled that the IDR dividend income of the Assessee was not taxable in India. The operability of this clause implies that dividend income from IDRs pertaining to periods prior to financial year 2017-18 can be made taxable in the country of residence only. However, dividend income on IDRs accruing post 1 April 2017 can be brought to tax in India.

[Source-ITA No.: 7388/Mum/19]

Brought-forward business loss can be set-off against capital gains

Background

Karnataka High Court in a recent ruling in the case of Nandi Steels Limited held that the **brought-forward business loss can be set-off against capital gains.** This ruling over-turned the ruling of the ITAT Special Bench which had originally denied such set-off.

Facts

The Assessee, a limited company was engaged in the business of manufacture of iron and steel. For the AY 2003-04, they had set-off brought-forward business loss against capital gain from sale of land and building and borewell basis the proposition that set-off can be claimed against any income which has the attributes of business income even though it is assessable to tax under any other head. The case was re-opened on account of such claim of set-off. Subsequent to the CIT(A) dismissing the appeal, the ITAT made a reference to the President for constitution of special bench for deciding on the matter of the set-off. The special bench of the Tribunal also rejected the Assessee's claim and an appeal was filed before the High Court.

Ruling of the High Court

- Guidance taken from the legal maxim expression unius est exclusion alterius as dealt by the Apex Court in the case of GVK Industries which means that express mention of one thing implies the exclusion of another
- Section 72(1) of the Act states "under the head profits and gains or profession", whereas Section 72(1)(i) does not mention "under the head". It has been left open that any income from business though classified under any head can still be entitled to the benefit of set-off
- Relies on the Supreme Court ruling in the case of Cocanada Radhaswami Bank Ltd and Chugandas & Co wherein it was held that business income is broken-up under different heads only for the purpose of computation of total income. The income itself does not cease to be income of the business on account of such break-up, the different heads are only for the purpose of classification
- Holds that the brought forward business loss can be set-off against the long-term capital gain on transfer of capital assets of business

Key Takeaways

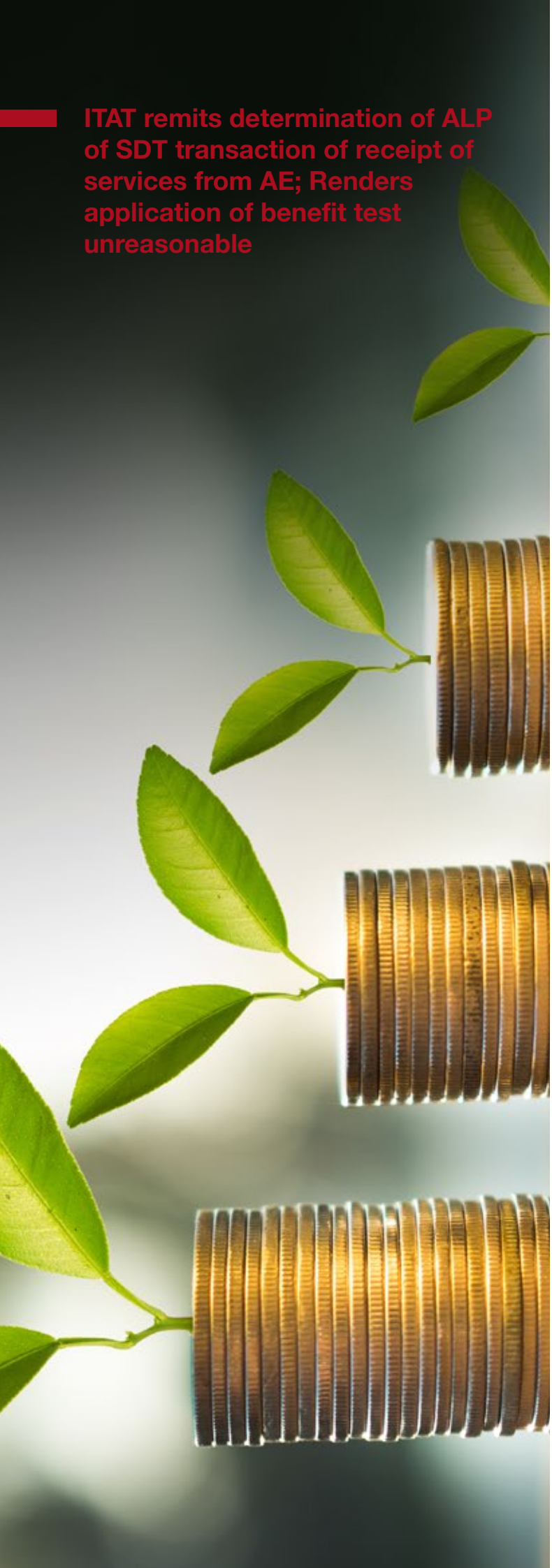
The principles of this landmark ruling would be useful practically to business in these challenging times. This ruling is of huge significance to loss making entities who undertake distress sale in order to mobilise resources for running the business. This position can also be explored by companies who are in the process of winding up on account of huge losses where they are in the process of disposing off their fixed assets. In the absence of such mechanism for set-off, the companies would end up paying tax on the capital gains and the business losses would continue to exist without any set-off benefit. Where this position was not adopted at the time of filing of original return income, one can look at making a claim during the assessment proceedings.

Past Precedents

Bombay High court has also taken the identical view that any brought forward business loss can be set off against any gains arising from any business or profession (although chargeable to tax under any head of income). Affirmation by the Karnataka High Court is a welcome development under the current challenging times.

02

Transfer Pricing



ITAT remits determination of ALP of SDT transaction of receipt of services from AE; Renders application of benefit test unreasonable

Outcome: Partially in favor of both
Category: Selection of MAM; Principle of aggregation, ALP determination of SDT

Facts of the Case

- Adient India Private limited ("the Taxpayer") is a wholly owned subsidiary of Johnson Control Group. The taxpayer is engaged in manufacturing & sales and trades of automotive seating systems.
- During the year under consideration, the taxpayer entered into certain international transactions and specific domestic transactions ("SDT") with its associate enterprise ("AE") owing to which a reference was made to the Transfer Pricing Officer ("TPO") by AO for determination of ALP of such transactions.
- During the year under consideration, the Taxpayer has entered into a SDT transaction (one of the SDTs undertaken during the year) pertaining to payment of service charge to Tata Automotive Components Systems Limited ("TACO") for availing services related to Human resource, Group policies/Databases, Marketing and sales, Finance and Legal & taxation advisory services.
- Taxpayer benchmarked aforesaid transaction using Comparable Uncontrolled Price method ("CUP") as Most Appropriate Method ("MAM").
- During the proceedings, CUP method was rejected by the TPO, on the grounds of functional differences in nature of services rendered by comparables companies selected by the taxpayer for application of External CUP (i.e. only marketing services) as against the aforementioned bouquet of services availed by Taxpayer from TACO.
- Further, during the course of proceedings, taxpayer, as an alternate benchmarking, applied Transactional Net Margin Method ("TNMM") as MAM by aggregating its transaction of receipt of services along with other transactions, which was also rejected by the TPO.
- The TPO determined applied Any Other Method ("AOM") as MAM and determined the ALP as Nil on the grounds that no such services were availed by the Taxpayer which require any payment and the same were in the nature of shareholder services, thereby making an upward transfer pricing adjustment of ₹5.95 crores.
- Aggrieved by the same, the taxpayer filed objections before the Dispute Resolution Panel ("DRP"). DRP upheld the adjustment proposed by the TPO.

- Aggrieved by the final order passed by the AO incorporating the direction of the DRP, the taxpayer filed an appeal before Income Tax Appellate Tribunal ("ITAT")

ITAT's Ruling

- ITAT upheld TPO's rejection of CUP on the premise that CUP cannot be applied in case of lack of functional comparability. ITAT further stated that the Taxpayer only selected comparable agreements from foreign databases in the field of marketing, while in the case under consideration, both the entities are domestic.

- Further, in case of application of AOM by the TPO, the ITAT rejected TPO's contention of NIL determination of ALP as well as classification of such services as shareholder activity by *highlighting the relevance of availing services and not the resultant benefits arising therefrom*. The ITAT further observed the evidences/documents submitted by the taxpayer during proceedings and concluded that the Taxpayer availed specific and exclusive services from TACO.

- Lastly, the ITAT *rejected the Taxpayers contention of reasonableness of expenditure u/s 40A(2) of the Act* on the premise that section 40A(2) simply provides for making disallowance of any excessive or unreasonable expenditure having regard to the Fair Market Value while the TP provisions only provide for determination of ALP as per the prescribed methods under the Act.

- Furthermore, ITAT upheld TPO's rejection of TNMM by stating that the transactions aggregated are not closely liked transactions and placed reliance on rulings of **the Hon'ble Punjab & Haryana High Court in the case of Knorr-Bremse India P. Ltd. VS. ACIT (2016) 380 ITR 307 (P&H).**

- Accordingly, the case was referred back by the ITAT to AO/TPO for selection of MAM and re-determination of ALP. The ITAT further stated that it did not rule out the application of any of the aforesaid three methods but only rejected these methods for the reasons given for their application in the instant case.

Nangia Andersen LLP's Take

The present ruling puts light on the fact that the Income Tax Regulations have been formulated for smooth flow of business transactions and for nullifying tax evasions. The powers provided thereunder to tax authorities does not imply that they should question the business and commercial decisions in terms of any benefits accrued or derived to the business from acquiring any services which require payment of consideration.

Further, ITAT has reiterated that the relevant point to be considered is the fact that services have been availed and not the resultant benefits arising therefrom, thereby rendering the application of benefit test unnecessary.

The findings under the case adds to the bunch of tools that a taxpayer can use against the harsh decisions by the tax authorities.

Source: Adient India Private Limited [TS-226-ITAT-2021(PUN)-TP]

03 Regulatory

Updates Under The Companies Act 2013 and LLP Act 2008

1. **Lifting of Restrictions for holding board meetings via Video Conferencing ('VC')/other Audio-Visual Means ('OAVM')**

   Ministry of Corporate Affairs ('MCA') *vide* notification dated 15 June 2021 has omitted Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 (the Rules).

   According to the Rule, companies were hitherto not allowed to conduct board meeting through VC/ OAVM for certain specified agenda items, such as the approval of the annual financial statements, approval of the Board's report, approval of the prospectus, Audit Committee Meetings for consideration of accounts and approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

   With the aforesaid amendment to the Rules, the companies will now be able to conduct board meetings through VC/OAVM for all agenda items.

2. **Shops & Establishment Registration to be Part of Incorporation Process**

   MCA *vide* a notification dated 7 June 2021 has issued Companies (Incorporation) Fourth Amendment Rules, 2021 ('Companies Incorporation Rules'). According to the Companies Incorporation Rules, companies will now be able to apply for Shops and Establishment Registration at the time of Incorporation.

3. **Additional fees for delayed enrolment/renewal with databankfor independent Directors**

   MCA on 18 June, 2021 issued a notification amending provisions of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 ('Independent Directors Rules').

   As per the Independent Directors Rules, individuals who have been appointed or desires to be appointed as an independent director had to make an application for enrolment of their name in the databank for independent directors.

   MCA, through the aforesaid notification, has inserted a provision for delayed enrolment/renewal of enrolment of Independent directors in the data bank on payment of an additional fees of Rs. 1,000.

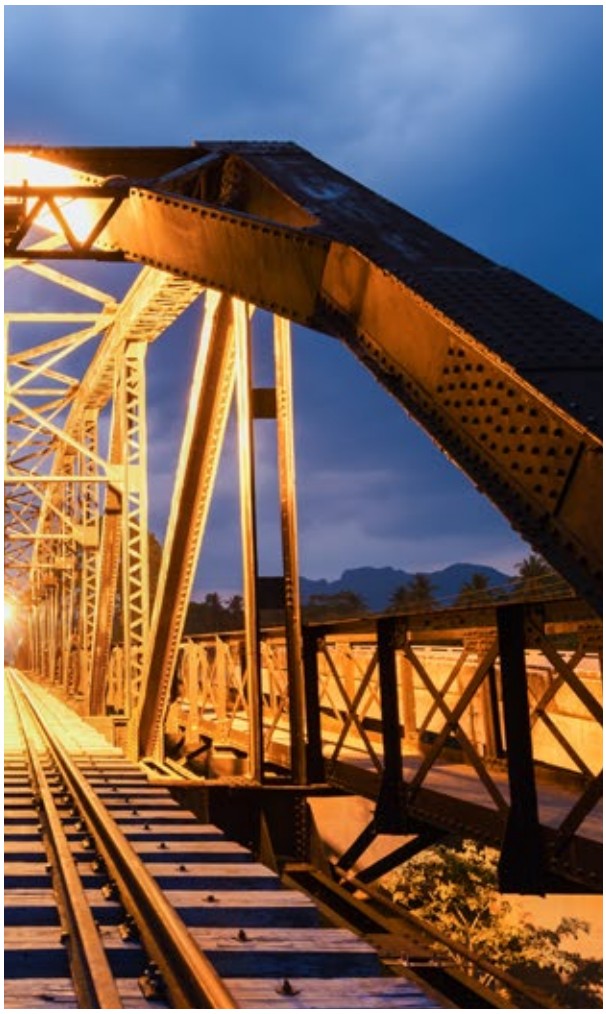
4. **Clarification on conducting EGM through VC/OAVM**

   In continuation to Ministry's existing Circulars on EGM and passing of ordinary and special resolutions, MCA *vide* clarification dated 23 July 2021 has decided to allow companies to conduct their EGMs through VC/ OAVM or transact items through postal ballot up to 31 December 2021.

   It has also been clarified that all other requirements provided in the existing Circulars shall remain unchanged.

5. **Extension of time for filing under The Companies Act 2013 And LLP Act 2008**

   MCA *vide* a General Circular No. 11/2021 dated 30 June 2021 has further extended the timelines for filing forms under the Companies Act, 2013 & LLP Act, 2008 which are due for filing during 1 April 2021 to 31 July 2021 without any additional fees till 31 August 2021.



Micro, Small and Medium Enterprises (MSMEs) Updates

1. **Revision of threshold under Micro, Small and Medium Enterprises (MSMEs) Resolution Framework – 2.0**

   With an aim to aid larger number of MSME borrowers, RBI vide a notification dated 4 June 2021 has revised the threshold of aggregate exposure for MSME accounts to be considered for restructuring from existing Rs. 25 crores to Rs. 50 crores.

Securities and Exchange Board of India ('SEBI') Updates

1. **Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015**

   SEBI, *vide* circular no. **SEBI/HO/ISD/ISD/CIR/P/2020/168**, dated 9 September 2020 implemented a System Driven Disclosures in phases, under SEBI (Prohibition of Insider Trading) Regulations, 2015. ('PIT Regulations')

   In terms of the aforesaid Circular, System Driven Disclosures were implemented for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company (hereinafter collectively referred to as entities) under Regulation 7(2) of PIT Regulations pertaining to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by the entities.

   Further, SEBI *vide* circular no. **SEBI/HO/ISD/ISD/CIR/P/2021/578**, dated 16 June 2021, has now decided to include the listed debt securities of equity listed companies under the purview of the System Driven Disclosures for the entities.

   The procedure for implementation of System Driven Disclosures shall also be applicable to the listed debt securities.

2. **Production Linked Incentive ('PLI') Updates:**

- **Operational Guidelines on PLI Scheme for Pharmaceuticals**

  The Department of Pharmaceuticals ('DoP') released the operational Guidelines for PLI Scheme for Pharmaceutical sector on 1 June 2021.

  One of the objectives of the scheme is to create global champions out of India who have the potential to grow in size and scale using cutting edge technology and thereby penetrate the global value chains. The Scheme was notified *vide* Gazette Notification dated 03 March 2021.

  Further, the Scheme having an approved outlay of Rs. 15,000 crore, is applicable to a wide variety of pharmaceuticals and in *vitro* medical devices. Incentives under the Scheme shall also be available for all bulk drugs (APIs/ KSMs and DIs) except the 41 bulk drugs that were included in the erstwhile PLI Scheme launched last year.

- **Operational Guidelines on PLI Scheme for Telecom and Networking Equipment**

  With the objective to boost domestic manufacturing, investments and export in the telecom and networking products, the Department of Telecommunications ('DoT') notified the operational guidelines on PLI Scheme for Telecom and Networking Equipment on 03 June 2021.

  The Scheme was notified *vide* Gazette Notification dated 24 February 2021.

  The PLI Scheme will be implemented within the overall financial limits of Rs. 12,195 Crores only for implementation of the Scheme over a period of 5 years. For MSME category, financial allocation will be ₹1000 Crores.

  Further, the Scheme is open to both MSME and Non-MSME Companies including Domestic and Global Companies. Manufacturers with products with Indian technology are encouraged to apply under the scheme.

  Applicants will have to satisfy the minimum revenue criteria to be eligible under the Scheme. The Company may decide to invest in single or multiple eligible products. The Scheme stipulates a minimum investment threshold of ₹ 10 Crores for MSME and ₹ 100 Crores for non MSME applicants.

  Furthermore, Small Industries Development Bank of India ('SIDBI') has been appointed as the Project Management Agency ('PMA') for the PLI scheme. The application window for the Scheme shall be open till 03 July 2021.

- **Operational Guidelines on PLI Scheme for White Goods (Air Conditioners and Led Lights) Manufacturers In India**

  The Ministry of Commerce and Industry approved the Production Linked Incentive (PLI) Scheme for White Goods (Air Conditioners and LED Lights) on 04 June 2021.

  The Scheme was notified on 07 April 2021 after receiving the Cabinet's approval.

  The Scheme shall be implemented over FY 2021-22 to FY 2028-29 with a budgetary outlay of Rs. 6,238 crore. The applicant will have to fulfil both, criteria of cumulative incremental investment in plant and Machinery as well as incremental sales over the base year in that respective year to be eligible for PLI. The first year of investment will be FY 2021-22 and the first year of incremental sale will be FY 2022-2023.

  Further, the incentive under the Scheme shall be provided to Companies making brown field or green field Investments for manufacturing in target segments in India.

- **Approval of Expenditure Finance Committee ('EFC') for PLI Scheme for Specialty Steel Sector**

  The Expenditure Finance Committee (EFC), on 09 June 2021 approved the PLI Scheme for Specialty Steel Sector.

  Further, the Ministry of Steel is in the process of finalising cabinet note with tweaked eligibility criteria, incentive slabs, and other conditions.

  The PLI scheme, which has an outlay of Rs 6,322 crore, is further being considered to plug import of speciality steel in a bid to boost manufacturing and enhance export capabilities in this segment of steel making.

  Highlights of the Scheme are:

  - Five categories and 20 sub-categories for the scheme
  - 20% value addition by third parties
  - Priority to Companies that front-load investments
  - Incentive to range between 15% and 4%
  - To include JVs and MoUs
  - Incentives to be capped at INR 200 crore per applicant. In other words, minimum of 3 applicants to get selected under the Scheme
  - Products likely to include: Higher on speciality steel production of API grade and head hardened and asymmetrical rails, followed by mid-range incentive for Tin Mill coated metal products, electro galvanised steel, and then colour coated, aluminium zin coated steel and heat-treated hot rolled steel products

  Further, since the priority will be given to Companies front-loading investments, large players would be front-runners.

- **Revised Guidelines for Other Service Providers ('OSPs')**

  On 5 November 2020, the Department of Telecommunications ('DoT') released 'New Guidelines for Other Service Providers' (New OSP Guidelines). The New OSP Guidelines superseded the 'terms and conditions – Other Service Provider Category' dated 5 August 2008 along with all its amendments (Old OSP Guidelines).

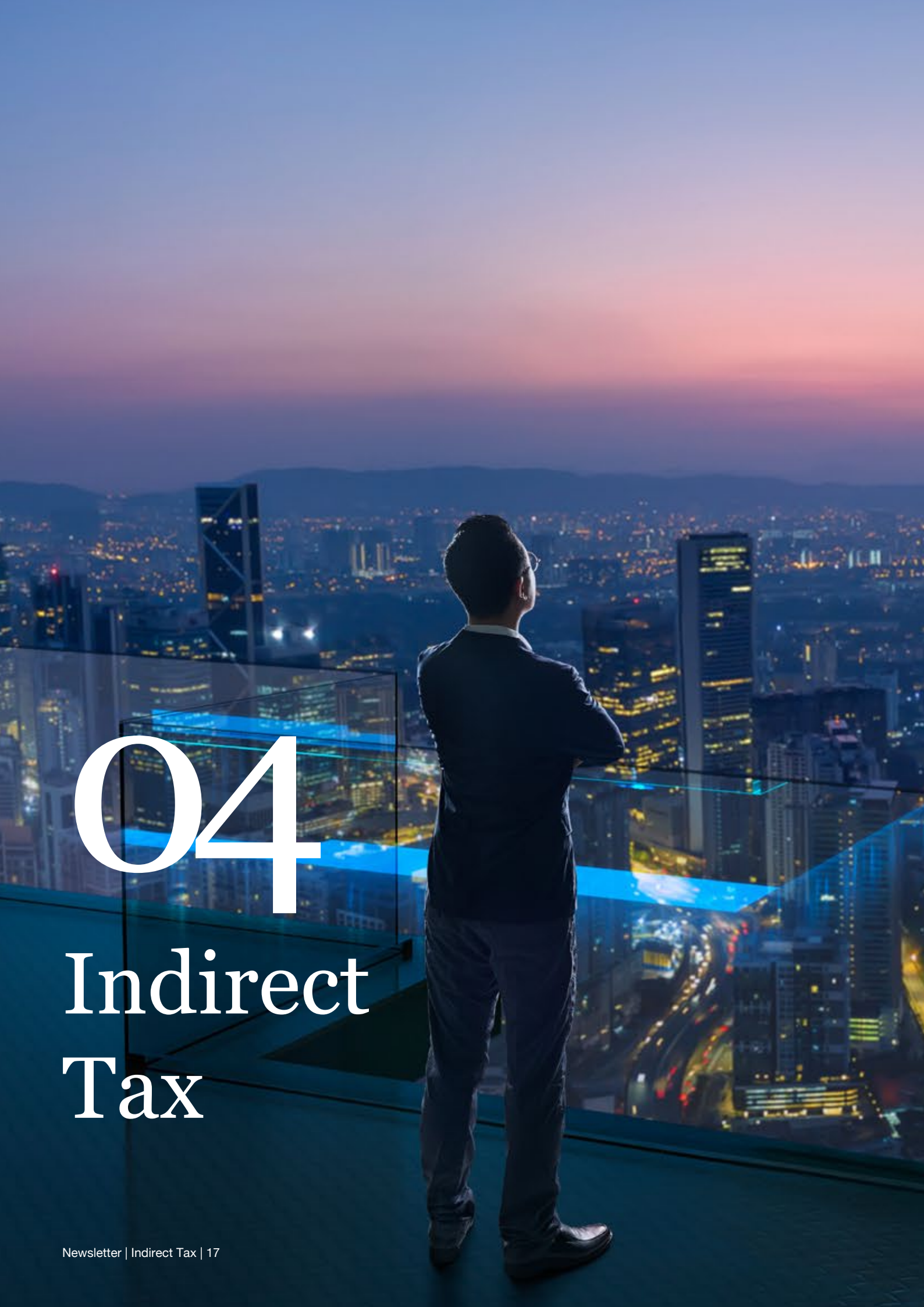
  With the New OSP Guidelines, the DoT had made significant alterations to the preceding regime that are expected to have far-reaching benefits for the outsourcing industry in India.

  Further, the Department of Telecommunications (DoT) on 23 June 2021 announced the second iteration of the telecom reforms for the BPM/ ITES industry by issuing the revised Guidelines for the Other Service Providers (OSPs).

  The revised guidelines aim at further liberalizing the OSP reforms that were announced last year.

  Highlights of the same are:

  - Remote agent is now allowed to directly connect with the Centralized Electronic Private Automatic Branch Exchange ('EPABX') of the OSP/ EPABX of the customer
  - Interconnectivity between OSP and Non OSP's have now been enabled
  - Centralized internet connectivity have been permitted using Software-defined Wide Area Network ('SDWAN')
  - Non-Voice based entities have been kept outside of the OSP purview
  - Use of third party EPABX has been enabled
  - Distinction between domestic and international OSPs have also been removed



04 Indirect Tax

GST Clarifications and Updates

Waiver of penalty for non-compliance of the provisions of dynamic QR code

(Notification No. 28/2021 – Central Tax dated 30 June 2021)

CBIC on the recommendations of GST Council has notified waiver of the amount of penalty for non-compliance of Dynamic QR code applicability on B2C invoices between the duration from 1 December 2020 to 30 September 2021.

Reduction in Tax Rates on specified items being used in Covid-19 relief and management

(Notification No. 05/2021 – Central Tax (Rate) dated 14 June 2021)

The Central Government on the recommendation of GST Council has reduced the GST rates on specified items being used in Covid-19 relief and management. Some of the key goods for which GST rates have been reduced are as follows:

S.No.	Description	Previous Rates	Reduced rates (applicable till 30 September 2021)
1	Remdesivir	12%	5%
2	Oxygen concentrators/ generators, including personal imports thereof, Ventilators	12%	5%
3	Covid-19 Testing Kits	12%	5%
4	Pulse Oximeters, including personal imports thereof	12%	5%
5	Hand sanitizer, Temperature check equipment	18%	5%
6	Ambulances	28%	12%

Extension in period of modification of Import Export Code ('IEC') till 31 July 2021 and waiver of fee for IEC up dation

(Notification No. 11/2015-20 dated 1 July 2021)

As per earlier provision of Foreign Trade Policy, 2015-20, an IEC holder had to ensure that the details in its IEC are updated every year during the period April-June. In case there are no changes in IEC, the same was also required to be confirmed on the portal. In case this exercise was not carried out in the specified period, IEC would have been deactivated. The due date for this exercise is 30 June for every year.

However, for the current year only, the provision has been revised and the period for modification has been extended by one month i.e. till 31 July 2021 to provide relaxation to the IEC holders. Further, fee for IEC modification during the month of July 2021 shall remain nil.

Advance Rulings & Judgements

- **Kerala Authority for Advance Ruling ('AAR') rules that the placement of specified medical instruments by the Applicant to unrelated customers like hospitals, labs etc., for their use without consideration for specified period, constitutes a 'supply of services' and not 'movement of goods otherwise than by way of supply**

  - The Applicant is engaged in the business of sale of pharmaceutical products and diagnostic kits. It places its own diagnostic instruments at the premises of unrelated hospitals, labs ('Users') for their use for a specified period without any consideration. The ownership however lies with the Applicant. As per the agreements between the Applicant and the Users, the Users are required to purchase specified minimum quantities of certain products at prices determined as per the agreements from the distributors of the Applicant. The Applicant supplies the goods to their distributors and distributors then supplies the goods to the Users. Applicable GST is paid on both the transactions. In case the minimum purchase obligation is not fulfilled by the Users, they will be liable to pay the deficit amount to the Applicant;

  - The question is whether the provision of specified medical instruments by the Applicant to unrelated Users for their use without any consideration but with a minimum purchase obligation from the Applicant constitutes a 'supply' or 'a movement of goods otherwise than by way of supply';

  - AAR observed that for a transaction to be treated as supply, there are some essential ingredients which are as follows: 1. the transaction shall involve goods or services; 2. it should be in the course or furtherance of business; and 3. it should be made for a consideration. As the given transaction clearly satisfies all the conditions, it was held that the transaction constitutes 'supply' as defined u/s 7 of CGST Act 2017.

  - AAR further referred to para 1(b) of Schedule 2 of CGST Act which states that any transfer of right in goods without transfer of title thereof, is a supply of service. Basis the same, it was held that the given transaction is clearly a 'supply of service' and not a 'movement of goods otherwise than by way of supply'.

  M/s. Abbott Healthcare Pvt. Ltd.
  (AAR no. KER/97/2021 dated 7 May 2021)

- **CESTAT Bangalore allows refund of unutilized CENVAT credit, erstwhile rejected by the lower Authorities on absence of nexus between the input service and exports.**

  - The Appellant is engaged in providing Consulting Engineer Services to various clients located outside India and is availing CENVAT credit of service tax paid on various input services including rent-a cab and management, maintenance or repair service.

  - The Appellant filed a refund application for refund of unutilized CENVAT credit on the input services availed and the output services relating to the period October 2015 to December 2015. The refund claim was partially rejected by the tax authorities on the ground of lack of nexus with output services and non-availability of certain input invoices.

  - The Appellant relied on various rulings wherein the Tribunal has held the input services availed by the Appellant, to be covered under the definition of "input service". It was further submitted that post the amendment to Rule 5 of Cenvat Credit Rules, 2004 ('Rule 5') the phrase "used in relation to manufacture of final product" and the phrase "used in relation to provision of output service" has been consciously omitted by the Legislature and the Board vide Circular DOF No. 334/1/2012-TRU dated 16/03/2012 ('Board Circular') clarified that no correlation is required as the intention of the Government is to allow refund to the exporters.

  - The Revenue reiterated the findings and submitted that with regard to Rent-a-Cab service, the appellant is not entitled to the refund because the said service is excluded from the definition of "input service" by way of exclusion clause.

  - The CESTAT Bangalore ('CESTAT'), observed that the Appellant has filed the instant input invoices and the same had been examined by the original authority and the same were also filed before this Tribunal also. Further, CESTAT stated that it is consistently held by the Tribunal in various decisions that after the amendment of Rule 5, there is no need for one to one correlation between the input services and the output services and moreover the Board Circular also clarified that no such correlation is required because the intention of the Government is to allow refund to the exporters.

- The CESTAT held that the Revenue has not questioned the service tax paid on input services at the time when the CENVAT credit was taken. Therefore, the Revenue is not permitted to question the same at the time of claiming refund. As regards Rent-a-Cab service, CESTAT opined that the said services were availed for the purpose of bringing and dropping the employees of the Appellant and is thereby used for providing the output service, also the same is well evident from the input invoices produced. Accordingly, the same is covered under the main clause of the definition of "input service". Thus, the Appeal is allowed and the Appellant is entitled to claim the remaining refund of CENVAT credit.

  M/s General Motors Technical Centre India Pvt. Ltd.
  (Service Tax Appeal No. 20400 of 2020)
  (Final Order No. 20100/ 2021)

- **CESTAT Bangalore allows for refund of CENVAT credit and held that Refund cannot be disallowed merely on the grounds of delay in reversing the credit in GSTR 3B**

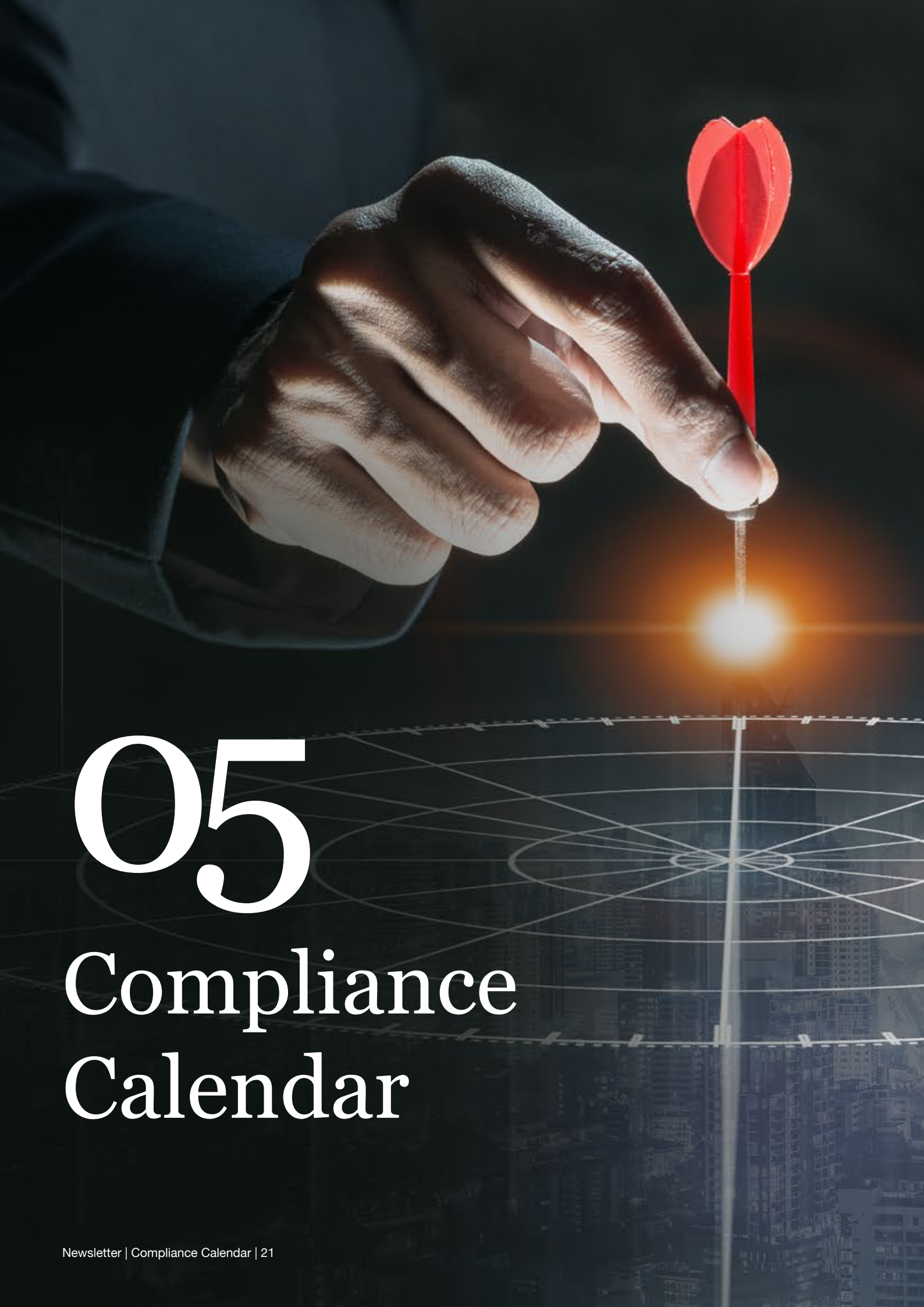
  - The Appellant is engaged in the manufacture and export of granite slabs and tiles and availed the CENVAT credit of service tax paid on input services used in the manufacture of their finished goods under the provisions of Cenvat Credit Rules, 2004 (CCR). Appellant filed three refund applications for refund of CENVAT credit under Rule 5 of CCR, 2004. However, refund was rejected vide show-cause notice on the ground that the appellant has not debited the amount in the CENVAT register as required under para 2(h) of the Notification No.27/20212.

  - The Appellant contended that they carried forward the available CENVAT credit to GST regime via Tran-1 form. It was also submitted that the amount claimed as refund was debited in the GSTR-3B for the period December 2017. Basis the same the original authority sanctioned the refund. Aggrieved by the order, the revenue department filed appeals with Commissioner (Appeals) who passed the impugned order allowing the appeals made by department against the sanctioned refund. Hence the appeal then filed to CESTAT by the Applicant.

  - CESTAT observed that Commissioner (Appeals) who set aside the Orders-in-Original and disallowed the refunds on the ground that credit reversal in GSTR3B pertains to GST credit and not CENVAT credit. CESTAT found that the eligibility of the appellant to claim refund is not disputed and it is also not disputed that the appellant has reversed the credit in the GSTR-3B but there was only a delay in debiting the same and this delay is procedural delay and will not disentitle the Appellant from claiming the refund.

  - CESTAT set aside the order of Commissioner (Appeals) and held that order rejecting the refunds was not sustainable in law and allowed the appeal of the Appellant.

    M/s Chariot International Pvt. Ltd.
    (Central Excise Appeal No. 20158 of 2020)
    (Final Order No. 20169 /2021)



05 Compliance Calendar

Direct Tax

Due Date	Particulars
7th July 2021	Payment of TDS/TCS - For the period 1st June 2021 to 30th June 2021
	Payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 - For the period 1st June 2021 to 30th June 2021
	Payment of Equalisation Levy in case of e-commerce supply of services referred to in section 165A of Finance Act - For the quarter ending on 30th June 2021
15th June 2021	Due date for furnishing quarterly statement of TCS (in form 27EQ) deposited for quarter ending 30th June 2021.
	Due date for issue of TDS certificates for tax deducted under section 194-IA in the month of May, 2021
	Due date for issue of TDS certificates for tax deducted under section 194-IB in the month of May, 2021
	Due date for issue of TDS certificates for tax deducted under section 194M in the month of May, 2021
30th July 2021	Due date for furnishing of challan-cum-statement (in form 26QB) in respect of tax deducted under section 194-IA in the month of June 2021
	Due date for furnishing of challan-cum-statement (in form 26QC) in respect of tax deducted under Section 194-IB in the month of June 2021
	Due date for furnishing of challan-cum-statement (in form 26QD) in respect of tax deducted under Section 194M in the month of June 2021
	Issuance of TCS certificates for the quarter ending 30th June 2021
31st July 2021	Due date for furnishing of quarterly statement of TDS deposited (in Form 24Q, 26Q and 27Q) for the quarter ending 30th June 2021

Due Date	Particulars
Extension of due date in statutory and regulatory compliance matters (Vide Circular No. 12/2021 dated 25th June, 2021)	
15th July 2021	Extended due date for furnishing of quarterly statement of TDS deposited (in Form 24Q, 26Q and 27Q) for the quarter ending 31st March 2021.
	Extended due date for furnishing of statement of income credited by an investment fund to its unit holder in Form No. 64D for FY 2020-21
30th July 2021	Extended due date for furnishing of Form 16A in respect of TDS deducted for the quarter ending 31st March 2021
31st July 2021	Extended due date of Issuance of TDS certificates in Form No. 16 for FY 2020-21
	Extended due date for furnishing of Equalization Levy Statement in Form No. 1 for the FY 2020- 21
	Extended due date for furnishing of statement of Income credited by an investment fund to its unit holder in Form No. 64C for the FY 2020-21
	Extended due date for furnishing of quarterly statement by authorised dealer in Form No. 15CC
	Extended due date for furnishing of Annual Statement in Form No. 3CEK by the eligible investment fund for the FY 2020-21
	Extended due date for exercising option under section 245M (1) of the Income-tax Act, 1961 in Form No. 34BB

Indirect Tax

Compliance Category	Compliance Description	Frequency	Due dates falling in the month of July 2021
Form GSTR-1	Details of outward supplies filed by registered person	Monthly	11 July 2021
Form GSTR-1	Details of outward supplies filed by registered person	Quarterly	13 July 2021
Form GSTR- 3B (Monthly Return)	Registered person having turnover more than INR 5 crores in the previous FY	Monthly	20 July 2021
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crore in the previous FY and registered in prescribed 14 States/UT*	Quarterly	22 July 2021
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crore in the previous FY and registered in prescribed 22 States/UT**	Quarterly	24 July 2021
GST Invoice furnishing facility	Optional facility to furnish the details of outward supplies under QRMP Scheme (Optional)	Monthly	13 July 2021
Form GSTR-04	Return by Composition dealers for FY 2020-21	Annual	31 July 2021 **(Notification No. 25/2021 - Central Tax dated 1 June 2021)**
Form GST ITC-04	Furnishing declaration for goods dispatched to a job worker or received from a job worker	Quarter	25 July 2021

*14 specified states: Chhattisgarh, Madhya Pradesh, Gujarat, Dadra and Nagar Haveli and Daman and Diu, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh

**22 specified states: Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha

Regulatory

Segment	Particulars	Due Dates
Monthly ECB Return	ECB-2 (Monthly Return of ECBs for the month of June)	July 07, 2021
Annual Return on Foreign liabilities and assets.	FLA Return	July 15, 2021

*MCA, *vide* notification dated 30 June 2021 has extended the timeline till 31 August 2021 for filing all e-forms under Companies Act, 2013 and LLP Act, 2008 which were due for filing during 1 April 2021 to 31 July 2021.

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